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LIST OF AUTHORITIES CITED.

Supreme Court of the United States.

Nos. 124, 125, 126, 127, 128 and 129.

OCTOBER TERM, 1918.

J. S. BOUNDS, Attorney in Fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and KATIE A. HOWE, Executrix of the Estate of Chester Howe, Deceased, *Appellants*,

vs.

JACK AMOS AND OTHERS, Known as the Mississippi Choctaws.

MOTION FOR AN ORDER REMANDING THE CASES TO THE COURT OF CLAIMS FOR ADDITIONAL FINDINGS OF FACT.

To the Honorable Chief Justice and Associate Justices of the United States—

Your petitioners, the appellants, J. S. Bounds, attorney in fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and Katie A. Howe, executrix of the estate of Chester Howe, by

Guion Miller, their attorney, request the Court to enter an order remanding these cases to the Court of Claims with instructions to said Court to make and certify additional findings of fact upon the following points:

1. Who were the associates of Chester Howe within the meaning of the jurisdictional acts in these cases?

2. Whether at any time between the years 1895 and 1907, during the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, Walter S. Field and Madison M. Lindly were in fact working in conjunction or association with Chester Howe in the prosecution of said claim, under a contract agreement or understanding that the said Field, Lindly and Howe would prosecute said claim together, and share with each other in the division of any fees that might be received by them from Mississippi Choctaws for the services thus rendered.

3. Whether at any time between the years 1895 and 1907, during the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, Walter S. Field and Madison M. Lindly were recognized as associates of Chester Howe in the prosecution of said claim, by any of the Committees of Congress, by any of the judges of Indian Territory, by the Secretary of the Interior, by the Commissioner of Indian Affairs, or by the Commissioner to the Five Civilized Tribes; or was either the said Field or the said Lindly so recognized as an associate of the said Howe.

4. Whether in 1895 and 1896 the intervenor, M. M. Lindly, an attorney-at-law of South McAlester, Indian Territory, was employed by certain individual Mississippi Choctaws then residing in the State of Mississippi to represent them in asserting their claim to citizenship in the Choctaw Nation.

Whether said Lindly at that time secured from said individual Mississippi Choctaws certain instruments in writing purporting to be contracts of employment to prosecute their said claims.

5. Whether under the employment set forth above in Section 4 the said Lindly appeared before the Dawes Commission and the District Courts of Indian Territory and was recognized by said Commission and by said Courts as attorney for said individual Mississippi Choctaws.

6. Whether in the Fall or Winter of 1895 the said Lindly associated with him the intervenor, W. S. Field, then a practicing attorney of Oklahoma City, Okla., to assist him in the prosecution of the Mississippi Choctaw claims.

7. Whether under said association with Lindly the said Field came to Washington in December, 1896, or January, 1897, to assist in securing legislation for the relief of the Mississippi Choctaws and whether during this visit to Washington said Field associated Chester Howe, then an attorney-at-law of Oklahoma City, Okla., and Washington, D. C., with him in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation.

8. Whether, thereafter, in the year 1897, the said Lindly, at the suggestion of the said Field, or otherwise, secured a certain instrument in writing in triplicate purporting to be a contract for the employment of the said Lindly, and purporting to be executed by the representatives of three bands of Mississippi Choctaws, with a view to securing the recognition of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and whether there was attached to said instrument a certificate purporting to be made by the

judge of a court of record in the State of Mississippi, setting forth the time when, and the place where, such instrument was executed, and that it was done in his presence, and setting forth who the interested parties were as stated to him at the time, the names of the parties making the same, the source and extent of the authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agents or attorney of either party or parties, and whether there was attached to said certificate the seal of the said court of record.

Whether thereafter the said Lindly appeared before the judge of the U. S. Court for the Central District of Indian Territory, and executed and acknowledged said instrument before said judge, setting forth in like manner the time when and place where said instrument was executed, and that it was signed in his presence by the said Lindly and likewise certifying to the other facts enumerated above, and whether there was attached to said certificate the seal of said court, and whether said instrument in writing purported in all other respects to be executed in accordance with the provisions of Section 2103, U. S. Revised Statutes.

9. Whether thereafter, in the year 1898, a contract, or agreement in writing, was entered into between the said Lindly, Field and Howe by which their previous oral agreement to act together in the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, was reduced to writing, and whether it was provided therein that the said Field and Howe should each receive one-fourth of the fees recovered and the said Lindly should receive the remaining one-half, and whether at the same time it was agreed between the parties that the said Lindly should, out of his one-half interest, pay all expenses growing out of his employment of James E. Arnold, Louis P. Hudson and John London in assisting in the identification and enroll-

ment of individual Mississippi Choctaws and in making the various contracts set forth.

10. Whether thereafter, in the year 1898, the instrument in writing referred to above in Section 8, and the contract or agreement set forth above in Section 9, were taken to the Commissioner of Indian Affairs by the said Howe, and whether the said Commissioner was requested by the said Howe and Field to approve said instruments as required by law.

11. Whether said instrument in writing, referred to above in Section 8, was examined by the officials of the Indian Office charged with the duty of considering such matters, and whether it was found by them to conform in all respects to the requirement of Section 2103, U. S. Revised Statutes, so far as all formalities were concerned, and whether the Commissioner of Indian Affairs held that the claim of the Mississippi Choctaws did not come under the provisions of said section, and whether he refused to approve said instrument for that reason.

12. Whether thereafter said instrument in writing, referred to above in Section 8, together with the contract or agreement, referred to above in Section 9, was returned by the Commissioner of Indian Affairs to the said Howe, and whether the originals of said instrument in writing, and said contract or agreement have been lost.

13. Whether from the year 1897 down to the time of the final allotment of the Mississippi Choctaws, the said Field and Howe, under and by virtue of the agreements and contracts referred to above in Sections 4, 6, 7, 8 and 9, appeared before, and were recognized by, the Commissioner of Indian Affairs as attorneys representing the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw

Nation, and whether the said Field and Howe in like manner, during said period, appeared before, and were recognized by, the Committees on Indian Affairs of the Senate, and House of Representatives, and by individual senators and representatives as the attorneys representing said Mississippi Choctaws.

14. Whether from the year 1896 down to the final enrollment of the Mississippi Choctaws the said Lindly, Field and Howe appeared before and were recognized by the Dawes Commission and the United States District Courts in Indian Territory as attorneys representing the Mississippi Choctaws.

15. Whether the said Field, Lindly and Howe during the years from 1896 to 1907 rendered valuable services to the Mississippi Choctaws, which materially assisted them in establishing their claim to citizenship in the Choctaw Nation. Whether such services were rendered by them in Mississippi and in Indian Territory before the Dawes Commission and the United States District Court, and in Washington, D. C., before the Commissioner of Indian Affairs, the Secretary of the Interior, the Committees of the Senate and House of Representatives and before individual senators and representatives.

16. Whether the said Lindly, Field and Howe presented before the Dawes Commission individual claims with a view to establishing the rights to citizenship of the Mississippi Choctaws as a class, and whether they prepared records in these cases for presentation to the Secretary of the Interior, and appaered before the Secretary in support of the same.

17. Whether in 1897 before the United States Court at Ardmore, Indian Territory, the said Lindly, Field and Howe

assisted in securing a decision from Judge Townsend recognizing the rights of said Mississippi Choctaws to citizenship in the Choctaw Nation, and whether this decision was useful in subsequent efforts on behalf of said Mississippi Choctaws.

18. Whether in 1897 the said Lindly, Field and Howe presented the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation to the Commissioner of Indian Affairs in Washington, and whether, as a result of their arguments and representations, they succeeded in convincing the Commissioner of Indian Affairs of the justice of the claim of said Indians, and whether they thereby secured the active co-operation and assistance of the said Commissioner in their subsequent effort before the Committees of Congress and before individual senators and representatives; and whether said Commissioner recognized and acknowledged that the services of Chester Howe and Walter S. Field, in the prosecution of said claim, were valuable and that the relief secured was in large measure due to the efforts of said Howe and Field.

19. Whether the said Field and Howe presented, and supported by argument, the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, personally to Senators Platt, Quay, Teller and Pettigrew, and Representatives Curtis, Little, Stevens and McRae, and whether these Senators and Representatives materially assisted in obtaining the necessary legislation on behalf of the said Mississippi Choctaws.

20. Whether, in 1897, the said Field and Howe, in connection with Robert L. Owen, assisted in preparing the so-called Walthall resolution of February 11th, 1897, and procured its introduction in the Senate, and whether they assisted in securing the amendment to the Indian Appropriation Bill of June 7, 1897, resulting therefrom.

21. Whether it was largely due to the efforts of the said Field and Howe, with the co-operation of the Commissioner of Indian Affairs, and Senators Platt, Quay and Teller, and Representatives Curtis and McRea, that the so-called compromise agreement of July 1, 1902 (32 Stat. 641) was enacted, under which said agreement all the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation have been secured.

22. Whether during the years from 1897 to 1902 the said Field and Howe were actively engaged in looking after the interests of the Mississippi Choctaws in Washington before the Department of the Interior and the Office of Indian Affairs, and before both houses of Congress, and whether they were at all times alert and watchful to prevent the enactment of legislation adverse to the said Mississippi Choctaws.

23. Whether from 1902 to 1907 the said Field, Lindly and Howe were actively engaged in the Indian Territory, and at Washington, D. C., in securing the enrollment of individual Mississippi Choctaws as citizens of the Choctaw Nation.

24. Whether the services rendered by the said Field, Lindly and Howe were rendered by them as attorneys, or gratuitously as volunteers or intruders.

25. Whether W. S. Field, M. M. Lindly and Chester Howe have ever received any compensation for said services rendered the 1578 enrolled Mississippi Choctaws referred to in Finding XXXII (Record, pp. 115 & 116).

26. What amount of money was expended by W. S. Field, M. M. Lindly and Chester Howe in the prosecution of the

claim of the Mississippi Choctaws, and what portion of such amounts so expended has been returned to them.

27. What is the proportionate part of the services rendered by each of the claimants, W. S. Field, M. M. Lindly and Chester Howe, in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and what is the total value of all of such services.

28. Was John London associated with Howe, Field and Lindly, and what, if any, assistance was rendered by John London to individual Mississippi Choctaws in securing their identification and enrollment as citizens of the Choctaw Nation; how many he so assisted, who they were, and what was the value of the services thus rendered.

29. What was the value of the services rendered by John London to M. M. Lindly in securing contracts of employment by the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation.

30. What, if any, assistance was rendered by M. M. Lindly to individual Mississippi Choctaws in removing from Mississippi to Indian Territory, in maintaining them there, and in securing their identification and enrollment as citizens of the Choctaw Nation; how many he so assisted, who they were, and how much money he expended in their behalf, and the value of the service thus rendered such individual Indians.

31. What, if any, assistance was rendered by Chester Howe to individual Mississippi Choctaws in removing from Mississippi to Indian Territory, in maintaining them there, and in securing their identification and enrollment as citizens of the Choctaw Nation; how many he so assisted, who they were, and how much money he expended in their behalf,

and the value of the services thus rendered such individual Indians.

32. The names of the Individual Mississippi Choctaws assisted by T. A. Bounds as set forth in Finding XXXVI (R. 121); the amount expended by him for each, and the value of the services rendered by him to each of said Indians so assisted.

33. The names of the individual Mississippi Choctaws shown to have been assisted by J. J. Beckham, as set forth in Finding XI (R. 126), and the amount expended by him in behalf of each, and the value of the services rendered by him to each of said Indians so assisted.

34. The names of the individual Mississippi Choctaws assisted, by William N. Vernon, in removing from Mississippi to Indian Territory, and maintained by him after reaching there, as set forth in Finding XXXVII, together with the amount expended by him for each one, either individually or as a member of a family, so far as is shown by the evidence, as well as the amounts received by him from said Indians, so far as shown. Also in what respect, and to what extent, the evidence fails to establish to the satisfaction of the Court the amount expended by said Vernon in conducting the removal and settlement of said Indians.

35. What would be a fair and reasonable compensation for the services rendered, and money expended, by William N. Vernon on behalf of each of the said individual Mississippi Choctaws so assisted by him.

36. What was the total value of the property rights secured to the Mississippi Choctaws as the result of the prosecution of their claim to citizenship in the Choctaw Nation.

Your petitioners respectfully represent to the Court that there was introduced in evidence on their behalf before the Court of Claims testimony upon which Findings of Fact covering all of the points above indicated could have been based, and upon which Findings of Fact favorable to your petitioners on each of said points could have been properly based.

Your petitioners further represent, that they duly requested the Court of Claims to make special Findings of Fact covering the points above indicated favorable to these petitioners, but the Court of Claims failed to make such Findings so requested and failed to make any Findings in lieu of the Findings so requested upon said points.

Your petitioners further aver that Findings of Fact upon the said points above indicated are essential and necessary to a full and adequate presentation to this Court of the questions of law involved in these appeals.

Your petitioners further aver that your petitioners, John London, Walter S. Field and Madison M. Lindly, in due time filed exceptions to the Findings of Fact as made by the Court of Claims and to the failure of the Court of Claims to make additional Findings of Fact, covering the points above indicated relating to their respective claims (Rec. p. 94), and bills of exceptions on behalf of the said London, Field and Lindly were duly prepared and presented to the Court, but the Court of Claims failed to settle said bills of exception although specifically requested so to do. (R. 201.)

Your petitioners further aver that they are informed and believe and so believing charge that the reason the Court of Claims failed to settle bills of exception as requested by the said London, Field and Lindly was that the said Court was of the opinion that the Rules of this Court regulating appeals

from the Court of Claims to this Court did not provide for, nor admit of the practice of the settlement of bills of exceptions, and appeals or writs of error to this Court upon such bills of exception.

Your petitioners further aver that your petitioners Field and Lindly, through their attorney, in due time requested the Clerk of the Court of Claims, in making up the Record on these appeals, to include therein the said exceptions and proposed bills of exceptions on behalf of the said Field and Lindly, but the said Clerk failed to include the same therein as requested.

Your petitioners further aver that on or about the 9th day of April, 1917, a motion for a writ of *certiorari* was duly presented to this Court on behalf of your petitioners Field and Lindly requesting this Court to award a writ commanding the Chief Justice and Justices of the Court of Claims to certify to this Court among other things the said exceptions and proposed bill of exceptions on behalf of the said Field and Lindly, but this motion was denied by this Court.

Your petitioners further aver that, as will appear on page 233 of the Record, it was the wish and instruction of these petitioners that the petitions and amended petitions filed by each of them should be printed as part of the Record, but through inadvertence the Second Amended Petition of Kate A. Howe, executrix of Chester Howe, was not so printed although duly transmitted to this Court as a part of the Record herein, and in order that the said Second Amended Petition may be conveniently considered by the Court they have had the same printed and attached to this petition as Appendix "A" hereto.

Your petitioners further aver that in case the Court should desire to satisfy itself as to whether there is reasonable

grounds for the assertion of your petitioners that there was before the Court of Claims competent evidence to establish the facts asked for in certain of the Findings of Fact requested by certain of your petitioners, they are filing herewith as Appendix "B" hereto, a true copy of the testimony of William A. Jones, late Commissioner of Indian Affairs, and of George A. Ward, late Law Clerk of the Land Division of the Indian Office, as introduced and filed as part of the Record in the Court of Claims.

Respectfully submitted,

GUION MILLER,

Attorney for J. S. Bounds, Attorney in Fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and Katie A. Howe, Executrix of the Estate of Chester Howe, Deceased.

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State of Maryland,
City of Baltimore, ss—

I, Guion Miller, being first duly sworn, depose and say that I am the attorney for the appellants, J. S. Bounds, attorney in fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and Katie A. Howe, executrix of the estate of Chester Howe, and I have read the above motion by me subscribed as attorney for said appellants, and that the facts therein stated are true to the best of my knowledge, information and belief.

.....

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Subscribed and sworn to before me, a notary public in and for the State of Maryland, City of Baltimore, this..... day of November, 1918.

Witness my hand and notarial seal.

.....

Notary Public.

STATEMENT OF THE CASE.

The petitions in these cases were filed in the Court of Claims under the provisions of the following Acts of Congress:

ACT OF APRIL 26, 1906 (34 Stat. 140).

"That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctow Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

ACT OF MAY 29, 1908 (35 Stat. 457).

"That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claim against the Mississippi Choctaws of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitably and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said Court under the provisions of section nine of the Act

of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles W. Winton, deceased: Provided, that the evidence of the interveners shall be immediately submitted. And provided further, that the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claim of the said Winton and of the other plaintiffs, authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

The claims of the appellants arose in this way: Prior to 1896 there were certain Choctaw Indians residing in the State of Mississippi who claimed to be entitled to participate in the partition of the lands of the Choctaw Nation in Indian Territory under rights reserved to them by Article 14 of the treaty of Dancing Rabbit Creek of September 27, 1830 (7 Stat. 333). These Indians became known as the Mississippi Choctaws, and at that time were very poor and ignorant and in a deplorable condition generally. (Finding XI, Record, p. 100.)

These Indians were not then recognized as members of the Choctaw Nation, either by the Nation, or by the Department of the Interior, and their rights were placed in jeopardy by the passage of the Act of March 3, 1893 (27 Stat. 645), providing for the creation of the Commission to the Five Civilized Tribes, familiarly known as the Dawes Commission, when followed by the Act of June 10, 1896 (29 Stat. 321), which directed the Dawes Commission to make a final roll of the Five Civilized Tribes, which included the Choctaw Nation, for the purposes of the allotment of the Choctaw lands among the members of the Nation in severalty.

It was to secure payment for the services rendered in preserving the rights of these Mississippi Choctaws, and in secur-

ing legislation by Congress enabling them to participate in the distribution of the tribal lands, that the acts of reference, above cited, were secured and the petitions of these appellants were filed in the Court of Claims.

The legislation that thus finally secured the rights of the Mississippi Choctaws is found in the Act of July 1, 1902 (32 Stat. 641). (Finding XXIX, Record, p. 144.) Under the provisions of this act, in order to secure their rights to allotment it was made necessary for the Indians to remove, to the Choctaw-Chickasaw country, within six months after their identification by the Commission, and make proof of settlement within one year; and they were required to reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment before they were entitled to receive patents for their allotments. Some of the petitions of these appellants make claim in whole, or in part, for services rendered and money advanced in assisting some of these Indians in being identified as Choctaws, and in removing them to the Choctaw-Chickasaw country, and in maintaining them there during the time required to perfect their title.

There were in all 1,578 Mississippi Choctaws enrolled and allotted under the provisions of the Act of July 1, 1902. The total value of the property rights secured by them is not directly found by the Court, but in the opinion (Record, p. 164) it is shown that the total value has been estimated at from $14,000,000 to $16,000,000.

ARGUMENT.

These appellants contend that the Court of Claims has not found all of the facts necessary for the presentation of the questions of law that they wish to raise on this appeal, and which they believe they are entitled to raise under the acts of reference.

The failure of the Court of Claims to make such additional findings, in the opinion of these appellants, was due, in great measure, to a misconception by that Court of the meaning and scope of the acts of reference, and a misconception of the opinion of this Court in the case of Trist vs. Child, 21 Wall. 450.

The appellants believe that as a result of this misconception and misconstruction the Court below regarded certain facts as immaterial which were really vital and material, and certain evidence immaterial that was, in fact, material and essential.

The material facts which the appellants claim were omitted by the Court may be gathered under the following general heads:

(1) There is no finding as to whether the appellants, Field, Lindly and London were associates of Howe within the meaning of the acts of reference.

(2) There is no finding as to whether Field, Howe, Lindly and London were recognized by Committees of Congress, the Commissioner of Indian Affairs, the Dawes Commission, and the District Courts in Indian Territory, as attorneys representing these Indians.

(3) There is no finding as to whether certain of the appellants rendered any services, and the findings as to others are insufficient on this point.

(4) There is no finding as to the value of such services.

The appellants believe that, in order to determine whether Field, Lindly and London were associates of Howe, within the meaning of the acts of reference, the facts should be

fully set forth showing their relations to Howe, and what they actually did in attempting to secure relief for the Mississippi Choctaws. They also believe, in order to show that they are entitled to receive compensation from the Indians for such services as they did render, that the facts should be stated, if they are facts, that the Commissioner of Indian Affairs, and the Committees of Congress, and the Courts in Indian Territory recognized Howe, Field, Lindly and London as attorneys for these Indians and dealt with them as such. With these facts established, the appellants would be in position to argue in this Court that Congress, in its plenary power over the affairs of the Indians, had the right to, and did, by the acts of reference, give authority to the Court of Claims to charge the Indians with the fair and reasonable value of the services thus rendered, entirely irrespective of actual, valid, direct, contractual relation between the Indians and the several appellants. They further believe that if services were rendered by any of these appellants under employment by individual Indians, which enured to the benefit of all these Indians as a class, that Congress had the right to, and did, give authority to the Court of Claims to charge all, with the services thus rendered that benefited all.

The appellants submit that the Court omitted to make the findings of fact now requested for the reason that the Court was in error in its decision as to the law of the case in the following particulars:

1. The Court decided that, in order for any claimant to recover in this case, it was necessary for him to prove that he had some direct contractual relations with the Mississippi Choctaws. Judge Booth, in his opinion on page 169 of the Record, says:

> "The claim in suit, as we view it, is an assertion of liability emanating from the performance of service

under an express contract, a service performed, a contract executed, an agreement where the plaintiffs have done all they agreed to do under the express agreements and nothing remains except to pay them therefor. The agreements themselves being invalidated, the service having been performed with the knowledge and consent of the defendants and from which they derived and have accepted, benefits, the law implies an obligation to pay what such services are reasonably worth. It has been uniformly held in the cases heretofore cited that jurisdictional acts, similar in most respects to the ones here under consideration, create no liability under the express agreements, the Court discarding them in so far as they stipulate for the payment of compensation, leaving for our consideration the determination of the question whether the transaction in all its aspects, taking into consideration the situation of the parties, is one which from the proof satisfies the Court that the claimants performed the services claimed for, resulting in benefit to the defendants under such circumstances that the law will imply a correlative obligation to compensate them therefor. The contracts are admissible in evidence both to establish knowledge upon the part of the defendants and as evidence of what might constitute a reasonable award for the work done. This is what the Court understands Congress to mean when it directs a judgment upon the principle of quantum meruit." (9 Cyc. 686.)

Again on pages 177-178:

"The claim of Chester Howe, deceased, is, on its face, devoid of merit. It is a claim against Hudson & Arnold and James E. Arnold. Howe traces absolutely no employment by or knowledge to the Indians that he was acting in their behalf. There is nothing in the record to even suggest such a relationship between Howe and the defendants that would warrant the Court in implying a contract upon their part to recompense him."

* * * * * * *

"Howe, in so far as this record is concerned, never saw a Mississippi Choctaw Indian. He advocated their

cause, it is true, and he did it with great faithfulness, and signal ability, but he was acting in behalf of his clients, Hudson & Arnold. It would be an act of great injustice to charge the defendants with the payment of an attorney's fee for services rendered by an attorney without their knowledge or consent, and who at the time of acting was under contract with other clients who promised to pay him. The Court cannot consider the failure of Howe's clients to pay him as an evidence that Congress intended to have the Indians answer out of their estate for this default. Howe's petition will be dismissed." (Record, p. 178.)

* * * * * * *

"Ralston & Siddons were employed by Howe and Howe agreed to pay them. They had no direct relationship with the Indians and their appearance was without the Indians' knowledge or consent. This petition will also be dismissed." (Record, p. 178.)

* * * * * * *

"From a legal aspect the claim must fail. Field, Lindly and London cannot by a copartnership agreement bind the defendant Indians to pay them for professional services which they never engaged them to perform. It is a startling proposition to contend that because Lindly, Arnold, or Hudson had a contract or contracts with the Mississippi Choctaw Indians, and in the performance of the same employed Field to assist them, that thereby the defendants incurred a liability to pay attorney fees to not only their contract attorneys but to all with whom they might thereafer associate. Lindly, London and Field never prepared, signed or presented a brief to the committees of Congress over their own names. Aside from Field's activity in interviewing personally some individual Congressmen and United States Senators, for which service he could not recover, not one of them had the slightest direct connection with the defendants, except as to some individual contracts taken by Lindly and London. The Congress did not intend by the use of the term 'associates' to extend a right to prefer a claim against the defendant Indians because perchance the personal relationship between Lindly, London, Field and Chester A. Howe was congenial and

agreeable. These three claimants cannot by an agreement between themselves enhance the cost to the defendant Indians for professional services for the performance of which the Indians engaged one of their number to perform. Even if the band and copartnership contracts were fully proved and established, except as to the individual beneficiary thereunder, no possible right of action could accrue. The Indians did not employ the intervenors; they did not even suggest their employment or know of it. The activity by them manifestly was in pursuance of an understanding among the intervenors to which the Indians did not accede and with which they had no concern. It was an express agreement *inter alia,* by the terms of which Lindly agreed with the remaining intervenors to share with them a proportionate part of fees due him under his contracts with the Indians. The Congress was not making contracts for the intervenors or erecting a relationship out of which every Indian attorney who voluntarily connected himself with another actively and properly engaged in urging the defendants' claims before the various departments of the Government, could come in and claim a personal liability to him. The defendants were not exposed to such unlimited liability. The term 'associates' must be read in connection with principles upon which we are to award judgment—'principles of quantum meruit.' An associate to recover cannot rest his case upon a mere contract of association with an attorney regularly employed by the defendants. He must do more; he must assume the burden of establishing a service under such circumstances and so connected with the defendants that the Court can imply a contract upon the defendants' part to pay what those services are reasonably worth. We have heretofore discussed the question under individual contracts and sums expended for removal which we need not again repeat. Suffice it to say that not a single one of the intervenors have established the slightest vestige of authority to represent the defendant Indians. Field himself never having procured a contract in his own name of any kind or character; and the mere fact, if it was established, that he may have been engaged by Chester A. Howe to assist him

> professionally in his presentation of the case, could under no circumstance give him more than a claim against Howe for the payment thereof." (Record, pp. 181-182.)

Chief Justice Campbell takes the same view. On page 197 of the Record he says:

> "Unless the relation of attorney and client, or some contractual relation existed between the defendant Indians and Winton at or before their enrollment, it cannot be said to exist at all so far as this proceeding is concerned, and no such relation is shown."

These quotations from the opinion make it perfectly evident that the Court of Claims did not believe that it was the intention of Congress by the Acts of Reference to direct the Court to ascertain who had rendered services and determine the value of such services, and charge the Indians for such services, irrespective of whether any direct contractual relationship could be shown. Being of this decided opinion it is not surprising that the Court failed to make findings which would be very necessary and essential if the view should prevail that Congress did intend that those actually rendering services should be paid for the same, irrespective of contractual relations.

The appellants submit that in considering these Acts of Congress, the peculiar situation of these Indians and the relations of the Government to them must be taken fully into consideration. Further, they believe that the fact, which was well known to Congress, and is made plain by the Record, that these Indians had no means of compensating their attorneys except through funds and property that might be coming to them through establishing their tribal rights, must be given consideration in determining the purposes of Congress in offering this relief to these claimants. It must have been that Congress had in mind the provisions of the Indian

Appropriation Act of May 31, 1900 (Finding 23, Record, page 109), as follows:

> "Provided further, that all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void."

The appellants submit that the proper interpretation of these Acts of Reference is, that Congress, recognizing great benefits had been conferred upon the Mississippi Choctaws, their wards, by reason of the activities of certain attorneys, that these attorneys were without a remedy to recover their claims against these Indians for compensation for the services thus rendered, either because of lack of formal contractual relations, or because by the Act of Congress of May 31, 1900, such contracts as they had held had been declared null and void, or because of the fact that the funds and property of the Indians were of such character that they could not be proceeded against without special authority from Congress, intended, and expressed an intention, to give to the Court of Claims jurisdiction to afford complete relief to the attorneys, and to do full justice to them. The Court of Claims has apparently given a strict interpretation to these Acts. They have not distinguished between the Government dealing with its wards, and acting, as *quasi* guardian, under obligation to see that those dealing with the Indains should be afforded protection, and the Government acting on its own account with persons *sui juris*. They have completely overlooked, apparently, the condition and situation of these poor Indians, downtrodden, widely scattered, and without, at that time, even the care and supervision of the Indian Office. (Finding XI, Record, p. 100.) It was perfectly obvious to Congress that in the very nature of things, such a band of Indians could not act as a unit, and, indeed, that many of them would not, of their own initiative, have either

the knowledge or the enterprise to secure attorneys to properly represent them.

2. Not only does the Court of Claims maintain that contractual relations must be shown, but it goes much further, and holds that this relation must be shown to have been with the whole band of Mississippi Choctaws; that such relation with individuals, or with bands less than the whole, would not be sufficient to enable the claimants to recover under this Act of Reference.

Judge Booth in his opinion says clearly that this is the view of the Court (Record, pages 175-176-177):

> "Aside from the merits of the claim it would be impossible to award a judgment in favor of Winton and his associates and conform to the opinion of the Court. Winton and his associates were, during the whole course of this controversy, discharging their obligations to the Indians under their individual contracts; they were representing Choctaw Indians, with whom they had individual contracts and endeavoring by their efforts to secure for them the greatest possible rights, both individual and property, in the Choctaw Nation as Congress might grant. Winton and his associates were advocating with ability and great earnestness a right accruing to the Mississippi Choctaws under the treaty of 1830 to remain in Mississippi and at the same time enjoy the benefits of the Choctaw citizenship in the Nation. This was a contention designedly assumed for the express benefit of their individual clients and for which they expected them and them alone to pay compensation. It was a service performed for and in the interest of a certain number of Mississippi Choctaw Indians without the knowledge or acquiescence of a large portion of the class with whom they had no contracts, and for whom other claimants were performing service of a very distinct and different character.
>
> "The jurisdictional act does not dispense with the necessity of proving a service of such a general character as to redound to the benefit of all the Indians alike; nor does it relieve the claimants or the Court from all the burden of detail investigation into the origin,

progress, and result of the service for which compensation is claimed. It would be extending the doctrine of an implied contract to pay for services rendered, which may produce beneficial results, to the limit to hold that services performed in the interest of a part of the Mississippi Choctaws imposes the burden upon a large portion of the tribe, totally disconnected in every way from any association with the claimants, of contributing toward payment therefor. Can it be said that because a certain class availed themselves of legislation advocated by claimants they thereby impliedly promised to pay them for services which the record discloses that these very beneficiaries were under contract to pay other claimants for doing the same thing? Supposing some of the Indians, as doubtless some did, had paid their attorneys, must they again respond for a service of which they knew nothing and which they never requested? It is impossible from the testimony to bring home to the large class sought to be charged with expense a common knowledge of what the claimants were doing, or to place them in a situation from which such knowledge may be inferred. The claimants attempt this by the simple introduction of their contracts of employment, supplemented by proof of what they did, apparently resting their case upon the theory that service to a portion of the class was made by the jurisdictional acts equivalent to service for all. To sustain a recovery upon the principle of *quantum meruit* there must be more in the record than a mere acceptance of benefits made available through the efforts of claimants to serve a particular class of the whole class in virtue of written contracts so to do. In a claim like this the principles of *quantum meruit* apply to the persons obligated to pay therefor by the written contracts which have been invalidated by law, but it cannot extend to a large number of persons who were wholly innocent of any work or labor being done for them with the expectation of compensating others than those whom they employed therefor.

"A judgment upon the principles of *quantum meruit* presupposes a situation of the parties whereby the Court may infer from the circumstances of the case that the defendants knew of the efforts in their behalf, acqui-

esced in the performance of labor for their benefit, accepted the benefits of such services, and thereby impliedly promised to pay therefor. In this case not only these claimants but all others have failed to do so. They have shown an individual employment, in some instances extensive, in others limited, each acting within his own sphere absolutely without concerted effort or personal affiliation and association. No one was attempting to serve all the Mississippi Choctaws; no one was attempting to do more than secure the enrollment of their individual clients regardless of the rights of others, and frequently at cross-purposes with each other."

And Chief Justice Campbell in concurring confirms this opinion:

"The jurisdictional acts refer to 'claims against the Mississippi Choctaws.' Not only the language of the acts but the considerations above adverted to as to service upon the defendants rebut a conclusion that suits are authorized against each Mississippi Choctaw who may have made a contract with or for whom or in whose individual interest services were rendered or expenses incurred by a claimant. The acts do not contemplate that the parties named therein, 'there associates or assigns' may propound in said proceeding claims alleged to be against one or a few Mississippi Choctaws who are sought to be charged with liability to such claimant and thereby convert the proceeding into a number of distinct and separable controversies between the several claimants and different Indians as defendants. * * * A claimant is not authorized to select particular Indians supposed to be liable to him and sue them in this proceeding. The claim must be 'against the Mississippi Choctaws' and that means against all of them who were enrolled. This view requires the dismissal of the petitions filed herein of nearly all of the claimants, and intervening petitioners." (Record, p. 188.)

"All of the contracts were with individual Indians and upon what theory it can be asserted that because a large number of said Indians made contracts with Winton or Daley other Indians not so contracting became affected or bound by them it is difficult to perceive. They did not constitute a tribe or band, and had no

tribal organization or government. The State laws had looked to the abolishment of any tribal or Indian government among them. They were citizens, and by contracting with them Winton admitted their power to contract. As late as February, 1906, as appears from the contract between Mr. Owen and Mr. Boyd, one of the associates named in Winton's petition, there is a reference to said contracts as being with 'various individual Mississippi Choctaws.' If the Mississippi Choctaws were 'in a state of helplessness, both financially and socially,' the fact but reinforces the conclusion that those who did not undertake or contract with Winton and his associates should not be held to be bound by the act of those who did contract." (Record, pp. 191-192.)

"The memorials of the 'Mississippi Choctaws' and Winton's said letter together do not create the relation of attorney and client between Winton and the Indians who did not employ him. Winton was retained by a number of Mississippi Choctaws under contracts which he was diligent to procure. That he represented his clients may be conceded. He was 'counsel' or 'attorney' for his clients and he had the right, as they had, to use the general designation of the Mississippi Choctaws in presenting the clients' case. But in so doing he did not become counsel for all of the Mississippi Choctaws. Those not contracting with him could be silent and not be bound to pay for his services or they could contract as many did, with other attorneys. If an attorney employed by one concern to present before a committee of Congress an argument in favor of a higher tariff on certain manufactured articles should see fit to urge that 'the manufacturers of the country' were in need of such legislation, would anybody than his client be bound to compensate him? If he notified them by circular or through the press that he intended to speak or act in behalf of all of them would 'the infant industries' be saddled with his fee upon the principle of *quantum meruit? I think not.*" (Record, p. 193.)

"Any rights of Winton must therefore rest upon contract, express or implied, with the Mississippi Choctaws made defendants to this proceeding in his petition. No express contract is shown or claimed. None can be im-

plied from the circumstances above referred to or relied upon by Winton. The employment by some Mississippi Choctaws was not an employment by all of the Mississippi Choctaws." (Record, p. 195.)

Judge Booth in the opinion of the Court of Jan. 29, 1917, on page 212 of the Record, summarizes the matter thus:

> "This expression 'The Mississippi Choctaws' standing alone is decidedly misleading. The issue, the real contest in this case, is the question as to whether or not the claimants represented or had authority to represent all the Mississippi Choctaw Indians."

If this opinion of the Court is correct and should be carried to its ultimate conclusion, it would follow that if some one of the claimant attorneys had been able to show that he had actual contractual relations with 1,577 Mississippi Choctaws out of the total enrollment of 1,578 he could not recover in this case. At the time these services were rendered no one knew or could by any possible means have known who, ultimately, would be determined to be entitled to be enrolled as Mississippi Choctaws, as has been shown by the Court in its opinion, Record, page 164:

> "The astounding number of 25,000 persons applied for enrollment as Mississippi Choctaws. The Commission rejected all applications except 2,534 and 956 of these failed of allotment because they furnished no proof of removal or settlement in the Indian country; 1,578 persons were finally enrolled and received allotments as members of the Choctaw Nation, having furnished proof of removal to the territory and otherwise complied with the requirements of the law."

If the Court is correct it would have been necessary for each of the appellants to have determined in advance which of the 25,000 Indian claimants were entitled, and to have secured in some form contractual relations with each one of such Indians before he could bring himself within the bene-

ficial terms with these Acts of Reference. The mere statement of this proposition demonstrates its inaccuracy.

The fact must not be lost sight of that at the time the Act of Reference of May 29, 1908 (35th Stat. 457, Finding 2, R. P. 96), was passed, the enrollment of the Mississippi Choctaws had been accomplished. Congress was then well advised as to their condition in Mississippi prior to their enrollment, and that this condition was such as to bring them especially within the well-settled law that where the parties interested are numerous and the object common to all, a few individuals may authorize proceedings for the benefit of all.

United States vs. Old Settlers, 148 U. S. 427-480;
Smith vs. Swormstedt, 16 How. 288-302;
Eastern Cherokees vs. U. S. & Cherokee Nation, 117 U. S. 288-311.

In passing these acts of reference it must be presumed that Congress took into consideration the peculiar situation of the defendant Indians at the time the attorneys began their labors. The difficulties attending the taking of contracts with these Indians must have been known. The uncertainty of any given individual being finally enrolled, and the certainty that effective work done for one must necessarily result in benefit to the whole class, were self-evident facts which undoubtedly influenced Congress in making provision for compensation in proportion to the value of the services of those who, in fact, rendered this effective work. These acts of reference are distinctly and peculiarly remedial legislation, and must be given a liberal construction, that is, a construction that will adequately carry into effect the real purpose of Congress. That purpose manifestly was to direct the Court of Claims to determine who were associated with Winton and Howe, and the others named in the work, and to award

to each a fair compensation for the services actually rendered. Congress must be assumed to have known that there was otherwise no possible way for those who had rendered service to enforce compensation. Congress knew that it had itself made void certain specific contracts. It knew that the Commissioner of Indian Affairs had refused to approve contracts with these Indians under Section 2103, R. S., and therefore there were no contracts outstanding that could be enforced against the property of these Indians held in trust or under restriction by the United States. Congress also knew that these Indians had not sufficient unrestricted property to compensate the attorneys for the benefits conferred upon them. Congress further knew that every principle of right and justice demanded that adequate relief should be extended to the attorneys who had faithfully and in good faith, by their long continued efforts, won for these heretofore ignorant, distressed and impoverished people a splendid inheritance and a position in society, where they and their children could enjoy the untold blessings of education and opportunity.

But further than this the Act of May 29, 1908, (R. p. 96) clearly shows that the contention that the appellants must show contractual relation with the whole body of Mississippi Choctaws is untenable. The Act expressly authorizes William N. Vernon and James S. Rounds to bring suit for the services rendered by them. These services were exclusively for the benefit of individual Indians. It can not be assumed that Congress did not know the character of these claims of Vernon and Rounds.

Their names were expressly inserted in the Act, and this would not have been done without a showing had been made as to the nature and character of their claims. If there is any doubt about this the proceedings before the Committee and the debates in Congress show that, in fact, the character of these claims were well known.

This brings us to a consideration of the decision of the Court that services rendered individuals in removing to the territory and maintenance while there, could not be made the basis for recovery under this act of reference. Judge Booth in his opinion says:

"Congress does not by the legislation create the situation necessary to be supplied by proof before the Court can act. It affords to the claimants a forum where the burden rests upon them to bring in a record of sufficient strength to sustain a recovery upon the legal principles provided by Congress as the court's guide.

"The judgment, if any, to be awarded is not an individual one. Proof of service to an Indian is not sufficient to recover. Congress was not assuming jurisdiction over individual Mississippi Choctaw Indians as Indian citizens, for if such had been the intent his individual right to be heard in defense would not have been, if it could be, denied him. The jurisdictional acts comprehend service to the Mississippi Choctaw Indians as a class, and under their terms the proof must establish a service that extended alike to all the Mississippi Choctaws enrolled as such on the rolls of the old nation. In the language of the jurisdictional acts, it must appear that the service was rendered in connection with and for the avowed purpose of legalizing 'the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation.' Incidental work and labor performed for the benefit of individual Indians, no matter how extensive, was not within the contemplation of Congress when a charge was laid against the Indian defendants' lands and funds, unless it can trace unmistakable benefits accruing alike to each and all of the 1,643 Mississippi Choctaw Indians finally enrolled in the nation and allotted lands under the law." (Record, p. 170.)

"By no possible means can it be said that money expended for the removal of from 20 to 60 individual Indians to the Territory redounded to the general benefit of Mississippi Indians as a class. While it is true they must remove to acquire the right, yet to bring a

claim against the class it must affirmatively appear that the service rendered and funds expended benefited all the class alike. The claim for removal is an individual one; it can not be otherwise." (Record, p. 171.)

"All these sums of alleged expenditure occurred subsequent to the acquirement of the right of citizenship and are incidental only to that right. It was personal service rendered to the individual Indian, moneys advanced and expended for his personal benefit, and not a claim recognized by Congress as one chargeable against the Indian lands. In addition to what has been said, it would be an absolute impossibility to reconcile the mass of confusing and contradictory testimony respecting this very subject and decide from the records what would be a reasonable charge for this service. It is beyond question that many individuals repaid some claimants for the moneys advanced for this purpose. Possibly many more, if permitted to do so, could prove a similar payment. It is inconceivable that Congress intended to reimburse claimants for the funds thus alleged to have been expended and provide no means of defense for the individual Indian charged. On the contrary, the very absence of any provision for individual defense and representation upon the part of the individual Indian manifests an indisputable intention to limit the jurisdiction of the court to an ascertainment of services rendered and expenses incurred which accrued alike to the Indians as a distinct entity and capable of being equitably apportioned among them." (Record, p. 171.)

"The claim of James S. Bounds is for services distinctly personal. Nothing that he did resulted in any permanent or temporary benefit to the Mississippi Choctaws as a class. His petition will be dismissed.

"The petitions of William N. Vernon, Joseph W. Gillett, Choctaw-Chickasaw Lands & Development Co., J. J. Beckham and David M. McCalib are all for personal services rendered for and on behalf of individual Choctow Indians, and all were rendered after the passage of the Act of July, 1902. They had no part in the solution of the Mississippi Choctaws' claims to citi-

zenship in the Choctaw Nation. The whole transaction of each petitioner and intervenor mentioned above was entirely speculative and personal. All the above petitions are dismissed." (Record, p. 182.)

So, too, Judge Campbell expresses the same view:

"The jurisdictional acts refer to 'claims against the Mississippi Choctaws.' Not only the language of the acts, but the considerations above adverted to as to service upon the defendants rebut a conclusion that suits are authorized against each Mississippi Choctaw who may have made a contract with or for whom or in whose individual interest services were rendered or expenses incurred by a claimant. The acts do not contemplate that the parties named therein, 'their associates or assigns,' may propound in said proceeding claims alleged to be against one or a few Mississippi Choctaws who are sought to be charged with liability to such claimant and thereby convert the proceeding into a number of distinct and separable controversies between the several claimants and different Indians as defendants. Since the acts do not provide for personal summons to or service on the Indians, but by their terms would charge the judgments rendered upon whatever may be due them as individuals from the United States, as well as further secure the payment of the judgments by a lien on lands owned by the Indians in severalty, the Court is not justified in extending the controversy beyond the term of the acts authorizing the proceeding. A claimant is not authorized to select particular Indians supposed to be liable to him and sue them in this proceeding. The claim must be 'against the Mississippi Choctaws,' and that means against all of them who were enrolled. This view requires the dismissal of the petitions filed herein of nearly all of the claimants, and intervening petitioners." (Record, p. 188.)

The language of the acts of reference certainly does not in terms limit the right of recovery to services rendered to the class. There was the same reason for affording relief to an attorney rendering service to an individual since without

relief of this character such attorney would be unable to enforce his claim for compensation. Furthermore, the right of no individual Indian was complete and fixed until he had actually removed and lived for a long peroid on the reservation. Without outside assistance many of them could never have so perfected their claim. This was well known to Congress, and must have been in the mind of the representatives and senators when this relief was offered. This is made perfectly clear when it is recalled that Bounds and Vernon are particularly named in the act of reference, and it must be presumed that Congress was fully advised that their claims were exclusively against individuals for services rendered after the Act of July 1, 1902. Making the judgment a lien upon the land of the individual could not have been inserted upon any other theory than that of an individual judgment for services rendered the individual.

Congress saw that these Indians would be subjected to numerous and vexatious suits, for the enforcement of their contracts for services rendered them, if some provision were not made for the payment of fair compensation for the services so rendered. It is evident therefore that it was for this reason Congress provided that the funds and lands in which these Indians had a property right, which were controlled by the United States, should be subject to the lien of any judgment rendered by the Court of Claims against an individual for services rendered him.

The suggestion that the absence of any provision for individual defense and representation upon the part of the individual Indian manifests an indisputable intention to limit the jurisdiction of the Court, we respectfully submit is not correct. The Act distinctly directs the Attorney General to appear and defend these claimants. This representation is ample and complete. If, as has been held by this Court, in Mullen vs. United States, 224 U. S. 448; Bowling vs. United States, 233 U. S. 527, and Heckman vs. United States, 224

U. S. 413, the United States may, of its own motion and in its own name, institute suits on behalf of individual Indians, certainly Congress has equal authority to provide for the defense of a suit against a tribe of Indians, or individuals, in matters directly affecting their tribal rights and funds. This representation having been provided by Congress, it cannot be said that the fullest opportunity for defense has not been extended to the defendant Indians.

3. Another mistaken view taken by the Court below, as the appellants maintain, is that it was necessary for them to show that their individual efforts secured the relief afforded the Mississippi Choctaws. In other words, that they must show by positive proof that but for their action Congress would not have passed the Act of July 1, 1902. Judge Booth makes this position of the Court plain in his opinion, where he says:

> "In addition to what has been said it is absolutely impossible from the record in this case to ascribe to any of the claimants the credit for securing legislation. The Congress acts deliberately, and information respecting matters of legislation is usually found in the several departments of the Government. In Indian affairs a separate branch of the Department of the Interior has been established by law with full jurisdiction over the administration of Indian affairs. The records of this department are reliable and trustworthy, and when Indian affairs engage the attention of Congress the Indian Office is called into consultation, and from its archives official documents supply information forming the basis of Indian rights, both personal and property. It would be a task impossible of performance to segregate the services of these claimants from the influence of the department's efforts in the adjustment of this controversy and say that the claimants exerted an influence that moved Congress into a recognition of the Mississippi Choctaw Indians' rights to citizenship. The usual course of legislation negatives the contention in the very beginning (Record, p. 177.)

And he repeats the same idea in his opinion of July 29, 1917, (Record, page 219):

> "The Court in any event can not ascertain from the record that legislation resulted from individual effort. The Congress of the United States acts deliberately. The terms and provisions of any laws passed by Congress can not be attributed to any outside influence or said to result from any personal advocacy of the same, and a claim for pay for legislative services goes no further than the specific things usually performed by an attorney in a court of justice, the very precise steps mentioned by the Supreme Court in Trist vs. Child, *supra*. The Court can only find from the records of Congress what transpired with reference thereto. There is no competent evidence in the record upon which the Court can predicate a finding in response to the above request. The fact sought to be elicited is a conclusion and not the statement of a fact."

And again on page 220:

> "A. Whether or not the full-blood rule of evidence was adopted by A. S McKennon in the report of March 10, 1899, as the result, wholly or in part, of the argument and efforts made by Robert L. Owen.
>
> "If the request is material, the fact is not susceptible of proof. The report of Commissioner McKennon is set forth in the findings. The inquiry seeks to elicit a conclusion. As before observed, we can not find from the proof in the record—as a fact—that certain public officials did this thing or that as a result of someone's argument. It is possible that they may have had convictions of their own. We set forth what they did, and if they give reasons therefor, find the same." (Record, p. 220.)
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> "This Court is unable (and it is no part of the issues in this cause) to find whether or not what the claimants said or did produced a 'powerful sentiment' for the passage of legislation advocated by them." (Record, p. 223.)

If this contention of the Court is correct then it is believed that Congress did a vain thing in referring the case at all to the Court of Claims. It is practically impossible to look into the minds of men and prove what actuated them to do a given thing. No lawyer could establish the fact that his services alone convinced the jury that his client was entitled to a verdict, nor could he prove that but for his argument the Judge would have rendered a different opinion, yet no one would seriously contend that a lawyer might not recover in a given action for services rendered in the presentation of a suit, on the basis of a *quantum meruit*, what his services were fairly and reasonably worth, because it would be vain for him to attempt to prove that the jurymen and the Court would have taken a different view of the facts and the law had it not been for his services. Should a juryman be called as a witness and be asked the question as to whether he had been influenced by the argument alone, in all human probability he would be unable to answer, and if, in fact, he did attempt to do so, who would be convinced by his evidence? In the same way—it is equally impossible to show that any particular individual induced the members of Congress to vote as they did. In every case they might have voted in exactly the same way without any presentation of argument, but, as in the case of a law suit where the attorney has rendered the service, and attempted to accomplish the result, and the result has, in fact, been accomplished, he is entitled to his fair compensation, so, before Congress, when the services have been rendered, the effort has been made to convince members of Congress that the matter is right and just, and when these efforts have been followed by success, and the results have been accomplished, those who have been engaged in this work are equally entitled to their remuneration, and can not be required, or expected, to do the impossible, and show just the effect on the mind of each member of Congress of the acts which they individually performed.

That the Court of Claims might find it difficult to reach a conclusion as to the value of the services does not relieve it of the duty to do so. That is what Congress directed it to do.

> "In estimation of damages the Court of Claims occupies the position of a jury under like circumstances. Damages must be proven. The Court is not permitted to guess any more than a jury, but like a jury, it must make its estimate from the proof submitted. The result of the best judgment of the triers is all that the parties have the right to expect."
>
> United States vs. Smith, 94 U. S. 214.

To assist the Court in reaching its conclusion, it is, of course, proper to introduce, as was done in this case, evidence of what services of the character of those rendered by the appellants are usually estimated to be worth.

The suggestion contained in the opinion of Judge Booth, (R. p. 177), that the size of the fee claimed by the appellants in this case is an indication that

> "the whole transaction from its inception to its close was intensely speculative in its character and devoid of the usual and customary relationship that should always obtain between attorney and client in that the former is always charged with the duty of protecting and conserving his client's interest and profit"

is well answered by this Court in its opinion in the case of Bemiss vs. Bemiss, 101 U. S. 42, where this language is used:

> "It remains to be considered whether there is in this contract of employment anything which, after it has been fully executed on both sides, should require it to be declared void in a Court of Equity, and the money received under it returned. It was decided in the case of Stanton vs. Embry, 93 U. S. 548 (XXIII, 983), that contracts by attorneys for compensation in prosecuting claims against the United States were not void because the amount of it was made contingent upon suc-

cess, or upon the sum recovered. And the well known difficulties and delays in obtaining payment of just claims which are not within the ordinary course of procedure of the auditing officers of the government, justifies a liberal compensation in successful cases, where none is to be received in case of failure.

"Any other rule would work much hardship in cases of creditors of small means residing far from the seat of government, who can give neither money nor personal attention to securing their rights."

The case of Stanton vs. Embry, cited above, lays down the rule that where the compensation has not been fixed it is competent to prove what is ordinarily charged in such cases, and we think this Court would be justified in taking judicial notice of the fact that 15% is not in excess of the ordinary amount charged in cases of this character. We feel that the criticism of the claimants by the Court of Claims in this respect is clearly unjust.

4. This brings us to the consideration of the interpretation placed by the Court of Claims upon the decision of the Supreme Court in the case of Trist vs. Child, 21 Wall. 441, and its application to this case. The Court emphatically holds that services rendered in presenting arguments and facts to individual members of Congress can not be made the basis for a claim by an attorney in any case, and the Court cites the case of Trist vs. Child in support of this contention. That the failure of the Court to make many of the findings of fact, which the appellants are now asking to have the Court instructed to make, was due to the Court's interpretation of this case, is made plain by the opinion of Judge Booth of Jan. 29, 1917. He says:

"The Congress of the United States concluded the controversy by the enactment of various laws covering the claimed right, and it is for services in connection with the passage of these laws that the claim in issue arises, what is commonly called a 'legislative service.'

For appearances before committees of Congress and other departments of the Government in behalf of a client interested in the passage of legislation, an attorney may lawfully charge fees, but such a character of service is strictly limited. No compensation may be charged or collected, no contracts in reference thereto can be enforced, for any service extending in the slightest degree beyond this well-defined zone of limitation. The personal solicitation of aid from an individual legislator, aid rendered an individual legislator, representations and arguments made for or before an individual legislator, no matter how convincing or under what circumstances, cannot under the law be the basis of a charge for professional services. Trist vs. Child, 21 Wall. 450. *The Court in finding the facts and reaching its conclusion of law upon the issues involved in the case has adhered with inflexible rigidity to the principles of law laid down in Trist vs. Child, supra.* We have further elaborated upon this subject in speaking to the requests of claimants wherein in our judgment it is directly in issue." (Record, pp. 212-213.) (Italics ours.)

"B. Whether or not Robert L. Owen, early in 1897, when he 'spoke' to Honorable John Sharp Williams, and submitted to him a copy of the Dancing Rabbit Creek Treaty, as stated in the second paragraph of Finding 11, was at the time recognized by Mr. Williams as speaking in the capacity of an attorney at law in the behalf of the Mississippi Choctaws, and was then requested by Mr. Williams to prepare and submit to him a brief, letter or written argument on the question of the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation and with which request Mr. Robert L. Owen complied and furnished Mr. Williams with such a brief?

"The fact requested is immaterial. Neither in virtue of an express contract nor upon a *quantum meruit* can a claim for compensation for professional services rendered by a claimant be augmented, much less predicated, upon the personal solicitations of and from a public Representative. *The Court has considered all testimony tending even in the direction of a claim for*

pay involving personal solicitation, as immaterial and incompetent. (Italcis ours.) In Trist vs. Child, 21 Wall. 450, the Supreme Court said:

"'We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied, for purely professional services is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments and submitting them orally or in writing to a committee or other proper authority, and other services of a like character. All these things are intended to reach only the reason of those sought to be influenced. They rest upon the same principle of ethics as professional services rendered in a Court of Justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case.'

"The Court regards the request and ones of similar import as immaterial. Whether Mr. Williams regarded Mr. Owen as attorney for the Mississippi Choctaws is likewise immaterial and quite surely incompetent if elicited to establish the case referred under the jurisdictional acts.

"C. Whether or not in 1897 Robert L. Owen presented an oral argument and written brief to the Honorable John Sharp Williams, then a Representative in Congress from the district in which the Mississippi Choctaws then resided, on the question, and in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and in favor of their rights to participate in the partition of the lands of the Choctaw Nation under the provisions of Article 14 of the Dancing Rabbit Creek Treaty between the United States and the Choctaw Nation, of September 27, 1830?

"Whether or not the written brief submitted by Mr. Owen to Mr. Williams was in accordance with the latter's request?

"Inquiry immaterial. Subject covered by discussion under prior request.

"D. Whether or not early in the year 1897 Robert L. Owen submitted an argument to Honorable John Sharp Williams, then a Representative in Congress from the 5th Congressional District of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, and, as the result of said arguments and documents submitted by him, Mr. Owen, or the interest created thereby, Mr. Williams became convinced, contrary to his original opinion, of the rights of said Mississippi Choctaws to share in the privileges of Choctaw citizens in the Choctaw Nation under Article 14 of the Dancing Rabbit Creek Treaty, entered into September 27, 1830, by the United States and the Choctaw Nation?

"Materiality disposed of by prior discussion. Trist vs. Child, *supra.*" (Record, pp. 216, 217-218.)

And again on pages 225-226:

"J. Whether or not Mr. McMurray and Mr. Van Devanter, who drafted the amendment recognizing the full-blood rule of evidence, did so at the instance of Hon. J. S. Sherman, chairman of the Committee on Indian Affairs of the House of Representatives, before whom Robert L. Owen had argued in favor of the full-blood rule of evidence?"

* * * * * * *

"J. The facts asked for in this request are fully covered in the Court's findings. It is quite immaterial as to who requested Mr. McMurray or Mr. Van Devanter to draft the legislation: even if the claimants had done so it would be a gratuitous service." (Record, pp. 225-226.)

It will be noted that Judge Booth distinctly asserts that the Trist case is directly in point and that their interpretation of it controlled them not only in their conclusions of law, but also in their findings of fact, saying:

"The Court in finding the facts and reaching its conclusions of law upon the issues involved in the case, *has adhered with inflexible rigidity* to the principles of law laid down in Trist vs. Child, *supra,*" (italics ours)

and he has made it plain in the opinion of the Court (R. p. 213), that facts of the character now asked for were regarded by the Court as immaterial. In fact, he directly states that they are immaterial (R. p. 217).

The facts in the Trist case differ widely from the facts as disclosed by the Record in this case, and we believe the Court of Claims has erred in applying the principles of the Trist case to the facts of this.

In the Trist case this Court said:

> "It was, on the part of Child, to procure *by lobby service*, if possible, the passage of a bill providing for the payment of the claim." (Italics ours.)

The Court then shows the character of lobby service by quoting from a letter of Child, as follows:

> "Please write to your friends to write to any member of Congress. Every vote tells, and *a simple request may secure a vote, he not caring anything about it.* Set every man you know at work. *Even if he knows a page, for a page often gets a vote.*" (Italics ours.)
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> * * *
>
> "In our jurisprudence a contract may be illegal and void because it is contrary to a constitution or statute, or inconsistent with sound policy and good morals."
>
> * * *
>
> "It is a rule of the common law of universal application, that where a contract express or implied is tainted with either of the vices last named, as to the consideration or the thing to be done, no alleged right founded upon it can be enforced in a court of justice."

The Court then cites instances where the rule has been applied such as agreements:

> "to pay for not bidding for a contract to carry the mail on a specified route; to pay for suppressing evidence and compounding a felony"; and "to pay for promoting a marriage";

and refers to the case of Marshall vs. R. R. Co., 16 Howard, 314.

The Court then goes on to say:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied for purely professional services is valid. Within this category are included: drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing, to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable." (Italics ours.)

What the Court was really dealing with in the Trist case is thus described by the Court:

"The agreement in the present case was for the sale of the influence and exertions of the lobby agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate, and, considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy. No one has a right, in such circumstances, to put himself in a position of temptation to do what is regarded as so pernicious in its character. The law forbids the inchoate step, and puts the seal of its reprobation upon the undertaking."

And the Court gives the reason for the rule in part as follows:

"A private bill is apt to attract little attention. It involves no great public interest, and usually fails to excite much discussion. Not infrequently the facts are whispered to those whose duty it is to investigate, vouched for by them, and the passage of the measure is thus secured. If the agent is truthful, and conceals nothing, all is well. If he uses nefarious means with success, the spring-head and the stream of the legislation are polluted."

The legislation sought by the Mississippi Choctaws was in no proper sense a private bill. Indian legislation cannot be enacted without proper and careful consideration. All such measures are submitted to the Secretary of the Interior and the Commissioner of Indian Affairs for their investigation and report. One of the important items of service claimed by the appellants, Howe and Field, in this case, is the presentation to the Commissioner of Indian Affairs of arguments that convinced him that the claim was just, and resulted in securing his active co-operation in advocating the passage of the legislation establishing the rights of the Mississippi Choctaws.

The case of Marshall vs. The B. & O. R. R. Co., 16 Howard, 314, referred to in the opinion in the Trist case is a typical instance of the kind of services for which compensation cannot be allowed. We ask the attention of the Court to the facts of that case as set forth on pages 314 to 319:

In the opinion on page 334, Justice Grier says:

> "Legislators should act from high considerations of public duty. Public policy and sound morality do therefore imperatively require that courts should put the stamp of their disapprobation on every act, and pronounce *void every contract the ultimate or probable tendency of which would be to sully the purity or mislead the judgment of those to whom the high trust of legislation is confided.*"

Certainly there is not the slightest intimation anywhere in the testimony in this case, or in the findings of the Court that the ultimate or probable tendency of any of the contracts, or of the services rendered by any of the claimants, would be to sully the purity or mislead the judgment of Congress.

These services had all been rendered before the jurisdictional acts were passed, and Congress must be assumed to have known of the nature and character of the services and of the contracts under which they were performed. By re-

ferring the matter to the courts, Congress has stamped the transactions as reputable and proper.

The services undertaken and rendered by the appellants were not lobbying services, but legal and professional services, without any taint of fraud or corruption. The distinction is obvious and well recognized.

> "Contracts for lobbying stand upon a very different footing, as was clearly shown by the *Chief Justice* in commenting upon a prior decision, in which the opinion was given by *Justice Swayne*. *Trist vs. Child*, 21 Wall. 450 (88 U. S. XXII, 624).
>
> "Nothing need be added to what is exhibited in the case last mentioned to point out the distinction between professional services of a legitimate character, and a contract for an employment to improperly influence public agents in the performance of their public duties. *Tool Co. vs. Norris*, 2 Wall. 53 (69 U. S. XVII, 870).
>
> "Professional services, to prepare and advocate just claims for compensation, are as legitimate as services rendered in Court in arguing a cause to convince a court or jury that the claim presented or the defense set up against a claim presented by the other party ought to be allowed or rejected. Parties in such cases require advocates; and the legal profession must have a right to accept such employment and to receive compensation for their services; nor can courts of justice adjudge such contracts illegal, if they are free from any taint of fraud, misrepresentation, or unfairness.
>
> "By the contract in question, the amount of compensation to be paid was not fixed; and in order to enable the jury to determine what the plaintiff was equitably entitled to recover, he called other attorneys, and proved what is ordinarily charged in such cases; and the defendants excepted to the ruling of the Court, in refusing to charge the jury that they should disregard such testimony.
>
> "Attorneys and solicitors are entitled to have allowed to them, for their professional services, what they reasonably deserve to have for the same, having due reference to the nature of the service and their own standing in the profession for learning, skill and proficiency;

and, for the purpose of aiding the jury in determining that matter, it is proper to receive evidence as to the price usually charged and received for similar services by other persons of the same profession practicing in the same Court. *Vilas vs. Downer*, 21 Vt. 419."

Stanton vs. Embry, 93 U. S. 548;
Wright vs. Teldetts, 91 U. S. 252;
Nutt vs. Knut, 200 U. S. 12;
Oscanyan vs. Winchester Arms Co., 103 U. S. 275.

As indicated above, the Mississippi Choctaw legislation was not in the nature of a private bill. It inevitably involved close official scrutiny. None of the dangers referred to in the Trist case were present. The Dawes Commission, the Commissioner of Indian Affairs, the Secretary of the Interior, and the officials of the Choctaw Nation were all on watch and alert. There was no opportunity for lobby work. Congress had to be convinced of the merits of the case. There is no intimation in the Record that personal solicitation of favor in the lobbying sense was indulged in. There is abundant evidence of attempts to convince individual Representatives and Senators of the merit and justice of the claim of the Mississippi Choctaws, and that they were legally entitled to citizenship in the Choctaw Nation. These efforts were successful. Congress recognized this and, by the acts of reference, endeavored to secure for those performing the service adequate compensation. The Court of Claims has failed to carry into effect the plain purpose of Congress.

5. The Court refused to make findings of fact requested by the appellants relative to the recognition of certain of the appellants by the Commissioner of Indian Affairs, by the Committees of Congress, and by the Courts in the Indian Territory, as attorneys representing the Mississippi Choctaws. This was done on the theory that such findings were

immaterial, as is shown by the opinion of Judge Booth of Jan. 29, 1917, where, in explaining the refusal of the Court to make similar findings on behalf of Robert L. Owen, he says:

> "The fact, if shown, is immaterial. The issue is not what the Committees of Congress, etc., recognized as the true representative capacity in which claimants appeared. The Court is trying a law suit committed to it by special acts of jurisdiction, and proof must be adduced showing the true relationship between the claimants and the Indians. This obviously can not be done by attempting to show that certain people recognized the claimants as appearing in a certain capacity, and any evidence tending toward that end is incompetent and immaterial. The parties mentioned were not charged with an investigation of this particular fact." (Record, p. 224.)

Here again, we submit, the Court failed to recognize the relation of the Indians to the Government, and the fact that the Commissioner of Indian Affairs, and the Committees of Congress, when acting in regard to Indian matters, are, in fact, acting as representatives of the Indians. It therefore is material to show that the committees of Congress and the Commissioner of Indian Affairs recognized these attorneys as the representatives of the Indians and co-operated with them in the presentation of the claim. The appellants allege that the Record below shows Field and Howe were recognized by the Commissioner of Indian Affairs as attorneys for the Mississippi Choctaws, and that Commissioner Jones, through their efforts, became convinced that the claims of the Mississippi Choctaws were just, and that he thereupon co-operated with them, and secured the support of various members of Congress for the measure granting the Indians relief. These appellants are now claiming that Field and Howe were working in good faith as attorneys endeavoring to secure legislation favorable to the Mississippi Choctaws,

and that they held contracts with the Mississippi Choctaws, both as a band and through individuals, which authorized them to so act; that these contracts, or some of them, had been presented to the Commissioner of Indian Affairs for his consideration and approval; that the Commissioner had failed to approve them only for the reason that he believed that the Mississippi Choctaws did not come under the provisions of Section 2103 of the Revised Statutes of the United States relative to Indian contracts, but that he had considered such contracts to the extent of recognizing Field and Howe as attorneys representing the Mississippi Choctaws. They are contending, further, that acting upon this recognition, Field and Howe performed services; that their right to represent the Mississippi Choctaws, under such contracts as they had, was not questioned, but, on the contrary, was recognized by the head of that Department which was peculiarly charged with the regulation of Indian affairs, to wit, the Bureau of Indian Affairs. Under the act of reference in this case, and upon a claim upon a *quantum meruit,* we submit that such recognition by the Government official having supervision of Indian affairs is a material fact which should have been found, and that the Court was in error in holding such facts to be immaterial.

As already stated, the appellants believe that as the Mississippi Choctaws are Indians and their status as Indians has been fully recognized by Congress, the principles that might be applicable in the case of attorneys dealing with citizens fully *sui juris* are not to be enforced as against these appellants. We believe that Congress had full and complete power to recognize the fact that services had been rendered by these appellants to the Indians, and to provide for reasonable compensation to be paid to the appellants for the services rendered. That this right existed independent of any contractual relation between the Indians and the appellants, and that by the enactment of the Acts of Reference in

this case, Congress did undertake, on behalf of the Indians, to compensate the appellants for all services rendered the Indians in the matter of their claim for citizenship in the Choctaw Nation, to be based upon the value of the services each may have in fact rendered. This contention is based upon the following well recognized legal propositions:

Congress has plenary power and guardianship over Indians and their communal and restricted property.

United States vs. Kagama, 118 U. S. 375-384;
United States vs. Rickert, 188 U. S. 432 (47-532);
Tiger vs. Western Investment Co., 221 U. S. 286 (55-738);
Heckman vs. United States, 224 U. S. 432 (56-832);
Mullen vs. United States, 224 U. S. 448;
Bowling vs. United States, 233 U. S. 528.

Congress alone can determine when this guardianship shall cease.

United States vs. Rickert, 188 U. S. 432;
Tiger vs. Investment Co., 221 U. S. 280.

The fact of citizenship in a State does not destroy or lessen this power and guardianship.

(*Ibid.*)

Under this power "in determining what is essential to the protection of the Indians, Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts."

Perrin vs. United States, 232 U. S. 478-486 (58-695);
Johnson vs. Gearlds, 234 U. S. 422 (58-1383);
Heckman vs. United States, 224 U. S. 413 (56-832).

The Estate of Chester Howe.

We respectfully submit that under Finding of Fact XXXIII (R. p. 116), the estate of Chester Howe is shown to be entitled to a judgment. The Court of Claims in its opinion (R. p. 178), in speaking of Howe says that he advocated the cause of the Mississippi Choctaws *"with great faithfulness and signal ability."* With such a splendid tribute to his services it does not seem possible that any argument is needed to establish the right of his estate to a judgment under the acts of reference in this case. The Findings are not sufficiently complete to enable this Court to direct the entry of a judgment for any specific sum, but the claim should certainly be remanded for further findings with a direction to enter judgment for the value of the services which the Court of Claims has found he did render with great faithfulness and signal ability.

The Claim of T. A. Bounds.

The facts disclosed by Finding XXXVI (R. p. 121) show clearly that T. A. Bounds rendered services to individual Mississippi Choctaws for which he is entitled to a judgment under the acts of reference. The particulars of these services are not sufficiently set forth in the Findings and his claim should be remanded for additional findings.

The Claim of William N. Vernon.

The facts disclosed by Finding XXXVII (R. p. 121) entitle William N. Vernon to a judgment for services rendered individual Mississippi Choctaws. The Court dismissed his petition on the ground that the acts of reference did not authorize judgment against individuals. This we have tried to show was error. If we are right in this, the claim should be remanded for further findings of fact.

The Claim of J. J. Beckham.

Finding XL (R. p. 126) shows that J. J. Beckham rendered services to individual Mississippi Choctaws for which he should be compensated under the acts of reference, if services to individual Indians come within the provisions of the acts of reference, as we insist they do. As the facts are not sufficiently stated by the Court of Claims his case too should be remanded for additional findings.

The Claim of Madison M. Lindly and Walter S. Field.

Finding XLII (R. p. 128) is incomplete and insufficient. The Court of Claims has not stated that Field and Lindly were engaged in working to establish the rights of the Mississippi Choctaws before the Dawes Commission, the courts in Indian Territory, the Indian Office, the Interior Department, and before Congress and among individual members of the House and Senate.

The Court has not stated that Field and Howe were distinctly and continuously recognized by Wm. A. Jones, then Commissioner of Indian Affairs, as attorneys working for the Mississippi Choctaws, and that he, as Commissioner, cooperated with them in furthering the interests of the Mississippi Choctaws.

These facts, fundamentally vital to the claim of these appellants, as we view the law, have not been stated by the Court. These facts are, as we view the case, all that need be established in order to entitle Field, Lindly and Howe to recover.

Our contention is that it is unnecessary to establish any direct contractual relation with the Mississippi Choctaws; that it is utterly immaterial whether there was a valid Band contract with the Indians or not, or whether there were any individual contracts.

If Field and Howe, believing they were authorized to act, in fact did act, and acted with the knowledge and with the co-operation of the Commissioner of Indian Affairs, and their acts can reasonably be assumed from the testimony to have aided the Indians in securing their rights, then they have fully brought themselves within the terms of the jurisdictional acts, and are entitled to recover in this action.

But the Court of Claims has not stated these facts, which we regard as so vital, and thus has limited the scope of our possible argument before this Court.

We only ask for a fair opportunity to present the legal question in a full and adequate way. To do this we must have findings that show that Field, Lindly, Howe and London were actually associated in working for the Mississippi Choctaws. We must further have a finding to show that this work was done with the knowledge of the Commissioner of Indian Affairs.

Having these facts shown in the Record, we are then in position to argue before this Court our contention that the Court of Claims is in error in holding that actual contractual relation between the appellants and the Mississippi Choctaws must be established, and is also in error in holding that the particular and exact effect upon the minds of members of Congress must be shown in order to establish service that was beneficial to the Mississippi Choctaws within the meaning of the Acts of Congress. We contend that by the very nature of things it is impossible for any one to show by direct positive proof what induced Congress to enact this legislation. We contend that Congress by its acts of reference never intended to require this. We contend that proof of active, intelligent effort to secure the legislation must be presumed to have aided in securing it.

The Court excluded certain testimony relative to the contract of co-partnership between Field, Lindly and Howe and in regard to the band contract in the name of Lindly, both of which, as it is claimed, were before the Commissioner of In-

dian Affairs and recognized by him as valid. Judge Booth in speaking of this, says:

> "The alleged written co-partnership between Field, Lindly and Howe is attempted to be established by a copy of the same. The Court discards it, for Howe was dead when it was first produced and his signature does not appear thereon, and no effort is made and does not appear to have ever been made to bind Arnold, Hudson or London to the agreement in writing; and inasmuch as Arnold directly contradicts, and Hudson prefers no claim thereunder, furnishing no proof thereof, this phase of the association is left alone upon the unsupported testimony of Field and Lindly." (Record, p. 180.)

Again on page 181, in speaking of the band contract, he says:

> "The execution of the original can not be sustained by a simple recitation of individual opinion respecting its acknowledgment by those especially interested in sustaining the same. Not a single witness is produced to identify the signatures of the alleged parties thereto, when, before whom, and in what manner or even the capacity or authority of the officer in Mississippi before whom it is alleged to have been taken. The whole transaction is entirely too indefinite, too much is left to inference and conjecture, too many implausible and contradictory statements with reference thereto abound, to warrant the court in the light of the long history of the life and local conditions of the Choctaw Indians in Mississippi to attach weight to an alleged contract of this character."

The reasons given by the Court for discarding the co-partnership agreement that Howe was dead when it was first produced and his signature does not appear thereon, and that no effort is made and does not appear to have ever been made to bind Arnold, Hudson or London to the agreement in writing, are certainly not sufficient to exclude it as evidence. This claim is not made in derogation of any right of

Howe. It is made by Field and Lindly in support of Howe's claim just as much as it is in support of their own.

The appellants claim that there is evidence in the case that this copy was taken from Howe's files, and Howe's executrix in her second amended petition (Appendix A, page 63), claims through the same band contract. The testimony of Field and Lindly, therefore, was admissible in support of this co-partnership agreement, and the findings should have been made covering the facts.

In subdivisions 8 to 12 of the appellants' motion, reference is made to Band Contracts alleged to have been entered into by certain bands of Mississippi Choctaws with the appellant, Madison M. Lindly, and to an agreement alleged to have been entered into by Lindly with Field and Howe.

The contention of the appellants, Lindly, Field and Howe, is that if the Court of Claims had made Findings of Fact based upon the evidence before them covering these points, it would appear that Field and Howe left with the Commissioner of Indian Affairs a paper writing which upon its face purported to be executed in full compliance with Sec. 2103, U. S. Revised Statutes; that this paper writing purported to be a contract between the Bands of Mississippi Choctaws and Madison M. Lindly for the prosecution of the claim of the Mississippi Choctaws, and that the certification of judges of courts of record, under the seals of the courts, were attached showing the full authentication of the parties to the contract, as required by law. That it would be further made to appear that this paper writing was examined by the officials of the Indian Office and found to be regular in every particular, but was not approved because at that time the Indian Office did not think it had jurisdiction over the Mississippi Choctaws. That it would be further made to appear that accompanying this paper writing was another paper writing establishing an association between Lindly,

Field and Howe. That these two paper writings had been lost.

With these facts established, these appellants, Lindly, Field and Howe, would be in position to contend in this Court that they had proven a contractual relation with the Mississippi Choctaws; that the certification of the judges of the Courts of record, under the seals of the Courts, established the facts thus certified to so far as the law required such certification.

That the certificates established not only the genuineness of the signatures, but likewise the fact that the parties were the parties they claimed to be, and were acting in the capacity and by the authority under which they were purporting to act.

This principle is well established:

"It is a presumption of law that all public officers and especially such high functionaries, perform their proper official duties, until the contrary is proved.

"When an act is to be done, or patent granted upon evidence and proofs to be laid before a public officer upon which he is to decide, the fact that he had done the act, in granting the patent, is *prima facie* evidence that the proofs have been regularly made and were satisfactory.

"No other tribunal is at liberty to re-examine or controvert the sufficiency of such proofs when the law has made the officer the proper judge of their sufficiency and competency."

P. & T. R. R. vs. Simpson, 14 Peters, 448-458; See also—

Boulden vs. Monic, 7 Wheat. 122;
Campbell vs. Gordon, 6 Cranch. 176-182;
Cover vs. Manaway, 115 Pa. 338; 8 Atl.;
Rollins vs. United States, 23 Ct. Clms. 122.

"The certificate appearing on its face to be in conformity with the statute, is proof of its own genuineness."

Chitty on Bills, 642A.

"Where the certificate describes the proper officer acting in the proper place, it is taken as proof both of his official character, of his signature and of his local jurisdiction."

Thurman vs. Cameron, 24 Wend. 87;
Rhoades vs. Selin, 4 Wash. C. C. R. 718;
Willink vs. Miles, 1 Peters C. C. R. 429.

These authorities show that if the execution of the band contract is shown by the evidence to have been duly certified by courts of record, as required by law, no further proof of execution would have been required if the original contract had been offered in evidence. This being true, the fact being shown that such a contract had been in existence, but had been lost, with full proof of the terms of the contract and of the fact that the certificates of the judges of the courts of record as to the execution were attached, no further proof of the execution is necessary.

Riggs vs. Taylor, 9 Wheat. 483;
De Lane vs. Moore, 14 How. 253;
Palmer vs. Logan, 4 Ill. 56;
25 Cyc. 1625.

The case of Nash vs. Williams, 20 Wall. 226, is particularly in point. There was offered in evidence in that case a copy of a certified copy of a judgment. The record of the judgment had also been destroyed. The copy of the certified copy was held to be competent evidence. The Court considers the validity of a certain administrator's sale, and says:

"The order of sale sets forth that the claim has been allowed by the administrator, but is silent as to its approval by the judge. The plaintiffs in error argued that this omission rendered the order a nullity." * * * "Jurisdiction is the power to hear and determine. To make the order of sale required the exercise of this power. It was the business and duty of the Court to ascertain and

decide whether the facts were such as called for that action." * * * "In the absence of fraud no question can be collaterally entertained as to anything lying within the jurisdictional sphere of the original case. Infinite confusion and mischief would ensue if the rule were otherwise. These remarks apply to the order of sale in question. The county Court had the power to make it and did make it. It is presumed to have been properly made, and the question of its propriety was not open to examination upon the trial in the Circuit Court." * * * "As regards public officers, acts done which presuppose the existence of other acts to make them legally operative, are presumptive proofs of the latter."

Bank vs. Dandridge, 12 Wheat. 70.

Under the law established by the above decision, the land contracts would be fully proved and authenticated if the Findings requested had been made. The Findings would then show that the original contract had existed, and had been lost. That, in accordance with the requirements of law, the judges of two courts of record under seal certified to the execution of the contract. These certifications would be presumptive proof that the parties were the parties they represented themselves to be, and had the authority they were assuming to exercise. It was manifestly the duty of the judges under the law to determine these facts before making the certification. The certification therefore establishes these essential facts.

In any event, if these facts had been found as requested they would have supported the argument on behalf of Lindly, Field and Howe that they had established a *status* which, under the acts of reference, would entitle them to recover for the reasonable value of the services rendered by them. It would then be possible to insist that they were not intruders, but were acting in good faith in the full belief that they were authorized to act. This, we submit, would justify a judgment in their favor on the basis of a *quantum meruit*, under the acts of reference.

We respectfully submit that the Court of Claims should have settled *bills* of exception as requested by the appellants, Field and Lindly. (R. pp. 94 and 101.)

That a bill of exceptions is an appropriate and proper form of procedure in the Court of Claims, is shown by the following citations from Supreme Court decisions:

> "Whilst we are of the opinion that the appellants are entitled to have the findings made complete on the points indicated by the interrogatories, either affirmatively or negatively, we do not regard a *certiorari* as the proper mode to effect the object.
>
> "If that Court (Court of Claims) should refuse, with proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to make a request that such findings be made, and to except in case of refusal."
>
> U. S. vs. (Adams) Child, 9 Wall. 661; Book 19, Co. Op. Ed., p. 809.

> "The fifth (rule as to appeals from the Court of Claims) permits either party to call for a finding upon special question deemed material to the judgment in the case, and, if refused, to ask this Court to pass upon the materiality of the fact alleged, and should it be considered material, to send down for the findings. Such is the construction given the rules in Mahan vs. N. Y., 14 Wall. 112. The object is to present the question here as upon an exception to the ruling of the Court below in respect to the materiality of the fact. For that purpose it must have been submitted to the Court in a written request as provided in the rule."
>
> Driscoll Case, 131 U. S. Appx., CLIX, Book 24, Co. Op. Ed., p. 596.

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> Driscoll Case, 131 U. S. Appx., CLIX, Book 24, Co. Op. Ed., p. 596.

> "If the Court of Claims refuses to find as prayed, the prayer and refusal must be made part of the record, so that this Court can determine whether the question is one so necessary to the decision of the case that it will send it back for such finding."
>
> Mahan vs. U. S. 14 Wall. 109.

The way to make such a refusal a part of the Record, is, as shown in the two cases cited, by taking an exception and this we submit necessitated bills of exception for the purpose of showing the fact and to complete the Record.

> "On an appeal, the parties were entitled to have all the facts proved in the case before the Court below, in the judgment of the Court truly found, and stated in the record, that either deemed material to the decision; and as we have seen, the remedy is ample to correct any mistakes committed, if applied for prior to the hearing in this Court."
>
> U. S. vs. Adams, 8 Wall. 654.

The same rule applies to admiralty cases. In Duncan vs. The Francis Wright, 105 U. S. 583, the Supreme Court held:

> "If the Circuit Court neglects or refuses on request, to make a finding, one way or the other, on a question of fact material to the determination of the cause, when evidence had been addressed on the subject, an exception to such refusal presented by a bill of exceptions, may be considered here on appeal."

So, too, if the Court against remonstrance finds a material fact not supported by any evidence.

> "In the one case the refusal to find would be equivalent to a ruling that the fact was immaterial, and in the other that there was some evidence to prove what is found when in truth there was none. Both these are questions of law and proper subjects for review in an appellate Court."

Whether or not circumstantial facts

> "establish the ultimate fact to be reached is, if a question of fact at all, to say the least, in the nature of a question of law." * * *
>
> "The inquiry thus presented is as to the legal effects of facts proved, not of the evidence given to make the proof, and the question of practice to be settled is, whether under our rule the judgment of the Court of Claims, as to the legal effect of what may perhaps, not

improperly be called the ultimate circumstantial facts in a case, is final and conclusive, or whether it may be brought here for review on appeal." * * *

"To avoid misapprehension in the future we take this opportunity to say that we do not only think such a judgment may be reviewed here, if the question is properly presented, but when the rights of the parties depend upon circumstantial facts alone, and there is doubt as to the legal effect of the facts it is the duty of the Court, when requested, to so frame its findings as to put the doubtful question in the record. After that the question is as to the effect of the facts, and when the evidence in a case had performed its part and brought all the facts that have been proved, these facts thus established are to be grouped, and their legal effect as a whole determined."

U. S. vs. Pugh, 99 U. S. 265.

The appellants, Field and Lindly, believe, as already indicated, that the circumstantial facts requested by them to be found by the Court of Claims are material and necessary for the proper consideration of the legal points which they desire to raise on their appeal. As required by the decisions of this Court they made requests for these Findings of Fact, which the Court of Claims deemed immaterial and failed to make. To this action the appellants, Field and Lindly, duly excepted. That these steps were taken and that the foundation was laid both by the introduction of evidence and by a proper request for Findings, could, as we submit, be best set forth by the settlement of Bills of Exceptions, as there does not appear to be, under the rules, any other way of legally establishing these facts in the Supreme Court, that is to say, no provision appears to have been made by the rules for the method by which the Supreme Court shall be satisfied, that the requests for Findings of Fact were made and that there was evidence in the Record below tending to establish those facts.

Respectfully submitted,

GUION MILLER,
Attorney for Appellants.

APPENDIX A.

COURT OF CLAIMS OF THE UNITED STATES.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, DECEASED, AND OTHERS,
v.
JACK AMOS AND OTHERS, KNOWN AS THE "MISSISSIPPI CHOCTAWS."

SECOND AMENDED PETITION IN BEHALF OF THE ESTATE OF CHESTER HOWE, DECEASED.

Now comes Katie A. Howe, executrix of the last will and testament of Chester Howe, deceased, by her attorney, William W. Wright, and for her second amended petition respectfully shows:

In order that the original petition filed herein may conform to the record proof, it is alleged as follows:

1. That Chester Howe, deceased, was originally employed on and in behalf of all resident Mississippi Choctaws, residing in the State of Mississippi (including those now appearing by name upon the final approved rolls of the Choctaw Nation) at their request and through their authorized representatives, by virtue of a certain power of attorney and general contract, set forth at length on page 927 *et seq.* of the printed record, and also by virtue of a certain "Band" contract referred to in the record testimony of the intervenor Walter S. Field.

2. That thereafter said Chester Howe, by reason of diverse agreements in writing, acquired an undivided one-third interest in certain individual contracts with Mississippi Choctaw Indians, which were taken through J. E. Arnold, the firm of Hudson & Arnold, and L. P. Hudson.

3. That legal services were rendered by Chester Howe, deceased, before Congress and the Interior Department, in the matter of claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, covering a period of years from about 1897 to the year 1907.

4. That Walter S. Field, one of the interveners in this case, was an associate of Chester Howe, deceased, in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation.

Respectfully submitted,

W. W. WRIGHT,
Attorney for Katie A. Howe, Ex.

APPENDIX B.

The deposition of W. A. JONES, for W. S. Field, Intervenor, taken at Washington, D. C., on the 12th day of June, A. D. 1911.

Claimant's counsel, WEBSTER BALLINGER, for Mr. Field.
W. W. WRIGHT, for Howe Estate.
W. E. RICHARDSON, for Mr. Arnold.
W. H. ROBESON, for Mr. Arnold.
Defendant's counsel, GEO. M. ANDERSON.

DIRECT EXAMINATION BY MR. BALLINGER.

Q. Mr. Jones, are you related in any way to any of these parties to this proceeding? A. Not that I know of.

Q. Have you any interest whatever in this proceeding? A. None whatever.

Q. Have you previously given or made any deposition in this proceeding? A. I have.

Q. I hand you a deposition taken upon interrogatories and dated the 11th day of August, 1909, upon which you were cross-examined on the 28th day of July, 1910, filed in the Court of Claims October 4, 1910, and ask you if this is one of the depositions you have previously given? (Handing papers to witness). A. That is my deposition and those are my signatures.

Q. I will ask you whether you gave a deposition in this proceeding on the 19th day of June, 1911, and which was filed in the Court August 7, 1911? A. I gave a deposition in Chicago and I presume this is correct—yes, that is correct.

Mr. Anderson: The defendants object to any reference to this alleged ex parte statement given in Chicago on the date referred to on the ground that same has been suppressed and the deposition ordered to be taken de novo.

MR. BALLINGER:

Q. Mr. Jones, are you acquainted with Walter S. Field? A. I am.

Q. When did you first become acquainted with him? A. Well, I couldn't tell you the year, but it must have been in 1872, I think. It was a great many years ago, but I can't fix the date.

Q. Prior to 1897 was your acquaintance with Walter S. Field somewhat intimate? A. Yes, sir.

Q. What were your relations? A. You mean as far as acquaintanceship was concerned?

Q. Yes? A. He lived in a neighboring town to where I lived, and when I first met him he was principal of school at Avoca and I was county superintendent. I think he had either just graduated from the university or was on the point of graduation, and my relation with him became quite intimate, owing to my official relations with the schools. I also knew his family quite intimately for some years previously.

Q. Mr. Jones, what official positions, that is, positions under the Government of the United States, have you held? A. Only one, Commissioner of Indian Affairs.

Q. When were you appointed and when did you leave the service? A. I think it was May 4, 1897, that I took the oath of office. My resignation took effect January 1, 1905.

Q. While you were Commissioner of Indian Affairs was your attention at any time called to the claims of the Mississippi Choctaws? A. Yes, sir.

Q. Please state by whom the matter was brought to your attention and approximately when? A. I think it was about two, possibly three months after I took charge of the office that Mr. Howe came to me and started to discuss the Mississippi Choctaw case, which at that time was new to me. I did not know there were any such people, and I told him that I was not familiar with the practice of the office and knew nothing of such matters. I do not recall whether he submitted a statement in writing or not, but I do not think he did. I think we simply discussed it informally and I told him I would take it up with the clerks in the office, who were better posted than I in such matters, and he could call again. He did call again and brought with him Mr. Field, whom I had known for a good many years, and we discussed the situation, and I cannot recall now whether they presented any written documents bearing on the subject of not. My impression is that they did. I cannot remember the details of the conversation, but I know that I consulted with the clerks

in the office and asked them to give me their opinions on the case. That was the first time.

Mr. Anderson: When was that? A. It was in the year 1897. It was two or three months after I got to Washington.

Mr. Ballinger:

Q. You mean two or three months after you became Commissioner? A. After I became Commissioner, yes.

Q. Please state whether at that conference or at any other conference had by you with any person relative to the claims of the Mississippi Choctaws, any question arose with reference to contracts of employment by attorneys? A. Yes, sir. Mr. Howe claimed to have a contract, I think, with some band or organization of the Mississippi Choctaws to represent them in a legal capacity. At the second interview that we had, when Mr. Field came with him, he stated that Mr. Field was interested with him in this contract, and asked me to go into it as thoroughly as I could. They were both present at the time. Mr. Howe did most of the talking.

Q. Was there subsequently a contract presented to the office for approval by either Mr. Howe or Mr. Field, a contract with the Mississippi Choctaws? A. My recollection is that there was a written contract.

Q. Please state what that contract was, as near as you can recall? A. I cannot go into the details of it because I don't remember it, but it was based, the fee was based, on a certain percentage of what they could recover. At that time I was not familiar, as I stated, with the practice of the office, but after consulting with the clerks and submitting, as I remember, the outlines of the contract, they decided that the Mississippi Choctaws were not under the supervision of the Indian Office.

Q. Do you recall whether that contract was an individual contract or whether it was a contract with a number of people collectively? A. My recollection is that it was with a band or collection, or some organization of the Mississippi Choctaws.

Q. Was that contract examined in your office as to its legal form? A. I think it was.

Q. Do you recall whether there was any objection to it on that ground? A. My recollection is that there was no objec-

tion to its form, that it was perfectly proper except that, as I stated, the office decided that it had no jurisdiction over the matter, and it was useless to take up the matter further on that line.

Q. Do you recall what became of the contract after it was submitted to your office? A. No, I do not, but I do not think it was filed, because I told Mr. Field that I did not think it was worth while to file documents over which we had no jurisdiction, and what was done with the contract I don't know.

Q. After this band contract was withdrawn did you have any conferences with either Mr. Field or Mr. Howe relative to any other contracts that might be taken with these Indians?

Mr. Anderson: I object to that as leading.

A. Yes, several of them.

Mr. Ballinger:

Q. Please state, as nearly as you can recall, what the matter was that was discussed and considered? A. After going over this first contract I think I suggested to Mr. Field that possibly the better way for him to do would be to get an individual contract with the members, which I thought he could do, without coming to the department for its approval.

Q. Have you any knowledge whether such individual contracts were thereafter taken? A. I do not remember that I have ever seen any of those individual contracts, but it was my impression—or my understanding—that there were a number of them. How many I don't know.

Q. Was there any understanding with your office relative to the individual contracts as to the amount of the fee to be charged? A. I cannot recall that.

Q. Had your attention or the attention of your office been called to contracts being made with the Mississippi Choctaws by any other attorneys at that time? A. I think my personal attention was called to it, but as to the attention of the office I do not remember.

Q. Do you recall the percentage named in the other contracts? A. No, I do not.

Q. During the entire time that you were Commissioner of Indian Affairs did any other attorney other than Howe and Field appeal to you for assistance in protecting the rights of

the Mississippi Choctaws? A. I have no recollection of any attorney or any one else mentioning the matter. In fact, I don't think any one did.

Q. Will you please state, Mr. Jones, how frequently Mr. Howe and Mr. Field or either of them called at your office and discussed this matter with you? A. I can't recall the particular times or anything like that, but they were there and very persistently a great deal of the time. Mr. Field, owing to my relation with him at home, was a sort of a privileged character, in a way—that is, he used to drop in there occasionally, simply for a visit, and almost in every instance he would bring up this case, until I got somewhat tired of him and told him that officially I could not do much for him because of the fact that I was not posted on it except as to what he told me and what the clerks in the office had told me, that they were not under our jurisdiction. But he and Mr. Howe would come there at least once a week, possibly oftener, to try to get me interested in the case and to assist them in some way.

Q. Did they ever call on you at other places relative to this matter? A. Yes, sir; Mr. Field used to come to my house. I don't think Mr. Howe ever did.

Q. Were their calls at your office and other places upon you relative to matters pending in your office relating to the Mississippi Choctaws? A. Not always, but very often Mr. Field would come in in regard to other matters.

Q. What I meant was, did they relate to matters pending in your office or Congress relative to Mississippi Choctaws? A. Both in the office and in Congress. Mr. Field asked me if I would not assist him in the committees of Congress, especially the Senate Committee in regard to some legislation concerning this matter.

Q. Did Mr. Field ever call on you accompanied by any members of the Senate and discuss the claims of the Mississippi Choctaws with you? A. Yes, sir.

Q. Can you state the name or names of the Senator or Senators? A. Senator Quay came there several times.

Mr. Anderson: When was that? A. Senator Quay called there several times, but I could not tell you the year. It was probably the second year after I came here. This matter is fifteen years ago, you know.

Mr. Anderson: Two years after you came would be 1899, then? A. Perhaps so. Yes, I should judge it would be somewhere about there.

Mr. Anderson: Or 1898? A. Yes, I should think so, or possibly 1900. Mr. Field was very diligent at all times, and I remember that he brought Senator Quay there several times, two or three times, and Senator Platt at least once. I remember that very distinctly, but it is only a general recollection I have of the time.

Mr. Ballinger:

Q. Did you, at Mr. Field's solicitations, call on any members of the Senate with him? A. Yes, sir.

Q. State what Senator or Senators? A. He and I called at his solicitation at Senator Quay's house in the northwest part of the city. I don't remember the exact place, but I think it was on K street. We called there one evening and discussed the matter, and I think he and I also called twice on Senator Platt in his office in the Capitol Building in regard to the matter. I think that I also at his solicitation went into a conference in regard to this matter with Senator Platt. It was either Platt or Quay, I have forgotten which.

Mr. Anderson: What were the dates of those conferences? A. I can't give you the dates.

Mr. Anderson: Those answers are all objected to because the dates have not been given.

Mr. Ballinger:

Q. At the conference you refer to, at which you called on Senator Platt, state what that conference was about? A. My recollection now is that an item was proposed to be inserted in the Indian appropriation bill, I think, in regard to this matter, as a sort of compromise, and I am not sure but that Senator Platt asked me about it or that Mr. Field asked me to consult with Senator Platt, and in that conference we discussed this proposed item. I cannot say now what the substance of the compromise was, but I know it was for the relief of these Indians along lines suggested by Mr. Howe and Mr. Field. I think that Mr. Field had a talk with Senator Platt the previous day and explained what he wanted, and Senator Platt wanted my opinion and my confirmation of the plan proposed.

Q. Do you recall who were present at that conference? A. No, I do not. I think, though, that Senator Stewart was

chairman of the Committee on Indian Affairs at that time, but as to who were present I don't remember.

Q. Were there any members of the House present? A. No, sir. I think it was a committee meeting, not a conference, but a meeting of the Senate Committee. I would not be sure whether it was a conference with the House Committee, but as a matter of fact I do not recall ever having any conversation with any member of the House Committee on Indian Affairs in regard to this matter. My activities were confined entirely to the Senate Committee.

Q. Were you frequently present at the meetings of the conference committees of the House and Senate on Indian legislation? A. Yes, by invitation, and also it was considered, I believe—whether it is now or not I don't know—that the Commissioner of Indian Affairs was ex-officio a member of the Conference Committee.

Q. During your term of office do you recall whether a resolution with reference to the Mississippi Choctaws was under consideration at any of these conferences between the conferees of the House and Senate at which you were present? A. Now, as I stated, I am not sure whether it was a conference of the two committees or at a meeting of the Senate Committee, but I am rather inclined to believe it was a committee meeting, because I can't recall any member of the House being present.

Q. Were there any bills introduced in Congress relating to the affairs of the Mississippi Choctaws, or any amendments inserted in Indian appropriation bills relating to the same subject, which were referred to your office for consideration and report? A. All important bills and amendments relating to Indian affairs were generally sent to the office to be reported on. I can't recall particularly that this particular amendment was sent there, but I think it was. I know it was referred to me personally by Senator Platt.

Q. During your term of office the question of the rights of the Mississippi Choctaws was before Congress for consideration on many occasions, was it not? A. Yes, sir.

Q. Do you recall whether on these various occasions your office was consulted and requested to report on pending matters? A. It was consulted in an informal way several times. I do not know that any written request was made, as was customary, for a report on this particular proposition. There

may have been a formal request for a report, but I do not recall it. I do recall that Senator Platt called me in several times to discuss the matter.

Q. Of your own personal knowledge, aside from Senators Platt and Quay, do you know whether any other members of the Senate took an active interest in this claim of the Mississippi Choctaws? A. I cannot recall any particular person. Of course, the chairman of the committee was taking an interest in all matters coming before the committee, but as to any other Senator taking an active part, I do not recall that. Senator Platt at that time and Senator Quay were influential members of the committee, and whatever they suggested was generally adopted. At least, I always felt sure that whenever I recommended anything that was reasonable and got Senator Platt's approval, I generally succeeded in getting it enacted into law.

Q. During the time that you were Commissioner what was the attitude of the Dawes Commission towards the Mississippi Choctaws? A. Why, it was hostile, steadily so, so far as the Indian Office was concerned.

Q. In what ways did they evidence their hostility? A. They would come to me and discuss the matter and express their opinion that the Mississippi Choctaws had no rights and ought not to be enrolled, and that no attention ought to be paid to their claim. Judge McKennon especially was hostile, and I think Mr. Bixby also, both were at that time members of the Commission.

Q. Did that hostility continue during your entire term of office? A. I think it did.

Q. Do you recall an incident that occurred along about 1900 or 1901 with reference to the withdrawal by the Commission of what was known as the McKennon roll of the Mississippi Choctaws? A. In a general way, yes, I remember it.

Q. Please state it. A. Well, now, there must have been something before that because they were opposed—Judge McKennon, at least, was opposed to making a roll at all of these Indians. When the roll was made—I do not recall the date, but I know that Judge McKennon came to me personally and was there for an hour or two discussing the situation, and asked that the roll be withdrawn because of the fact that it was full of errors, and they did not think it should be retained in the office. That is my recollection of it.

Q. Do you recall what your position was at that time relative to the withdrawal of the roll? A. Yes, I told them I did not think it would be proper to withdraw any document of that kind unless the Secretary of the Interior gave his consent, and I refused at the time to do it.

Q. Were you in favor of the Secretary's giving his consent to the withdrawal? A. No, sir.

Mr. Anderson: That is objected to as immaterial and irrelevant.

Mr. Hallsoer:

Q. Mr. Jones, do you recall when Mr. Field and Mr. Howe first approached you with reference to the claims of the Mississippi Choctaws, how extensive the claim was at that time, that is, as to what class of people they desired to secure property rights for? A. I do not remember the details. As I told you before, I was not aware that there were such people in existence as the Mississippi Choctaws, and what knowledge I had at the time was discovered from the discussion that we had at the office; that is, Mr. Howe, Mr. Field and myself. They represented that there were a great many of them and that they were in destitute circumstances, and the attitude of the white people in Mississippi was conflicting. Some of them wanted to get rid of them and others did not seem to care to have them removed.

Q. Did they support their favorable statements to you by documentary evidence? A. I think they did, although I cannot recall that documentary evidence. They brought in a great mass of matter, which I cannot recall now, bearing on the situation.

Q. What I desired to ascertain, if possible, was did they assert a claim in the first instance for any persons other than full bloods? A. I do not recall that question.

Q. Do you recall any conferences between yourself and members of the Senate Committee in 1902, when what is known as the supplemental agreement with the Choctaws was under consideration by Congress? A. Well, I can't remember any of those details. We had a great many conferences and I remember something about a supplemental agreement, but I can't recall——

Mr. Richardson: I suggest that the witness be permitted to examine the text of that agreement relating to the Mississippi Choctaws, preliminary to his answer.

MR. BALLINGER:

Q. Mr. Jones, I hand you a copy of the supplemental agreement of July 1, 1902, and call your attention to section 41 thereof, relative to the Mississippi Choctaws, and ask you to examine the same and state whether that will refresh your memory with reference to that legislation. (Handing document to witness.) A. I do not recall whether or not I had a conference with the committee as a whole, but I had a conference with Senator Platt in regard to this. I remember this agreement all right, the supplemental agreement, but I can't recall whether I had any conferences with the Senate Committee as a committee.

Q. I ask you now, also for the purpose of refreshing your memory, if you recall the attitude of the chairman of the Senate Committee, Senator Stewart, with reference to this particular provision in Act of 1902?

Mr. Anderson: The question is objected to because the chairman of the committee, Senator Stewart, is now dead.

A. I had some discussion with Senator Stewart in regard to the matter, and he was somewhat opposed to all of the Mississippi Choctaw agreement. He was not friendly to that agreement at all. There is no question about that in my mind.

MR. BALLINGER:

Q. I also want to ask you, Mr. Jones, if you recall who prepared the provision in this section relative to the full blood rule of evidence? A. No, I do not know who did that. I know it was discussed by Senator Platt and Senator Quay and myself, but who drew the draft of this I do not know. I do not know whether it was drawn in the office or not, but I know that the office acquiesced in it. I am inclined to think it was drawn in the office, but I could not swear to that.

Q. I now ask you if you recall visiting the Capitol with Mr. Field and seeing Senator Platt or any other Senators with reference to this particular provision? A. Yes, we called on Senator Platt and I think Senator Quay also.

Q. I now ask you whether or not it was on one of these visits that you refer to that Senator Quay displayed a little feeling with reference to the attitude of the chairman of the committee relative to this provision?

Mr. Anderson: I object to that as leading.

A. Yes, sir; it was.

MR. BALLINGER:

Q. State as nearly as you can recall just what the circumstances were concerning that particular conference? A. Well, I don't remember exactly whether this was proposed as an amendment or whether it had been changed, but evidently it had been left out of the bill, as I, and I think the office, suggested it be inserted. For some reason or other the bill had been changed, the chief item had been changed, and it didn't suit Senator Quay and he was considerably provoked about it, and I don't recall, but I think he went in and consulted Senator Platt and he became somewhat indignant, and I think they called on Senator Stewart and insisted that the item be inserted just as we had agreed on.

Q. And the provision you had agreed on was substantially as it appears in the statute? A. Yes, sir.

Mr. Anderson: That answer is objected to because the rough draft of the treaty will show the difference between th treaty as enacted and the agreement as proposed.

MR. BALLINGER:

Q. Do you recall, Mr. Jones, whether Mathew Stanley Quay was a member of the Senate during the entire time that you were Commissioner of Indian Affairs? A. I do not know whether he was Senator before I became Commissioner or not, but he was a member, as I recall it, all the time that I was Commissioner, unless he died while I was in office.

Q. Do you recall whether or not there was a temporary vacancy for a brief interval in Senator Quay's term?

Mr. Anderson: I object to that as leading.

A. No, I do not. My general recollection is that there was an interim there that he was not a member of the Senate.

MR. BALLINGER:

Q. Do you recall whether Senator Quay continued at all times his interest, whether there was an interval or not that he was not in the Senate? A. Yes, Senator Quay always showed a great deal of interest, not only in the Mississippi Choctaws, but in all Indians.

MR. BALLINGER:

Q. You have stated that the efforts of Walter Field and Chester Howe in behalf of the Mississippi Choctaw Indians commenced shortly after you became Commissioner of In-

dian Affairs, on May 4, 1897. Please state how long they continued to represent these people and urge their claims upon the Indian Office and upon Congress, to your personal knowledge? A. They continued right along until this provision was inserted in the bill. I do not remember whether this case was finished when I retired from office or not, but I know they kept up their work during all of that time.

Q. Up to the time you retired from the office of Commissioner of Indian Affairs? A. Yes, sir.

Q. Mr. Jones, please state of your own knowledge to whose efforts the recovery of the rights of the Mississippi Choctaws is directly attributable.

Mr. Anderson: That is objected to upon the ground that it is a mere matter of opinion on a question about which Mr. Jones' memory is rather hazy.

A. I can answer as far as the Indian Office and myself are concerned. There is no question about it that Mr. Field and Mr. Howe brought about all of the benefits that the Mississippi Choctaws received from whatever legislation was passed by Congress, and I believe that their efforts with the members of the Senate Committee were productive of practically all the legislation for the benefit of the Mississippi Choctaws. The last, of course, is only my opinion, but I am firmly of that opinion. As to the Indian Office and myself, it is not a matter of opinion; it is a statement of fact.

Mr. Ballinger:

Q. Mr. Jones, during a period while you were Commissioner of Indian Affairs was Walter S. Field under suspension by order of the Secretary? A. Yes, sir; he was.

Q. Please state whether or not during the period under which he was under suspension—state what treatment he was accorded at your hands and at the hands of the members of your office? A. He received the same treatment at my hands during the term of his suspension that he did before. I did not agree with the Secretary of the Interior in the matter of his suspension. I called on him and discussed the situation and told him that I did not think Mr. Field had been treated fairly, and while I have all the respect in the world for Secretary Hitchcock, he is one of the best men I ever met, absolutely honest, but he had a peculiar disposition. He was very suspicious of everybody. He is so very honest and conscientious himself that an insinuation on the part of anybody,

no matter who it was, as to the honesty of anybody practicing before the department received lodgment in his mind, and it was pretty hard to disabuse his mind of that impression. I was not successful in convincing him that Mr. Field had been treated unfairly, but I believed then and I believe now that he was treated unfairly.

Q. Then, do I understand that during the time Mr. Field was under suspension, and while you were Commissioner of Indian Affairs, that he was accorded the same privileges and same rights that he had theretofore been accorded as an attorney before your bureau? A. Yes, so far as I was personally concerned, and so far as I know in the office. I do not know whether he had the enmity of any of the clerks or not, but if he had I was not aware of it. He had access to the records, and I was always glad to give him any assistance I could within proper limits.

CROSS-EXAMINATION BY WILLIAM H. ROBESON.

Q. You have testified, Mr. Jones, that Mr. Field and Mr. Howe were very frequently in conference with you regarding the proposed legislation in behalf of the Mississippi Choctaws. It is true, is it not, that both of those gentlemen had a great deal of business other than that of the Mississippi Choctaws in the Indian Office at this time? A. Yes, sir.

Q. Did I correctly understand you to say that the contract presented to you for your approval by Messrs. Field and Howe purported to be a contract made with a body of Indians? A. That was my understanding of it at that time.

Q. Did you ever read the contract? A. I don't recall whether I did or not. I think I did, though. But if I had I would not have known anything about it because I was new in the Indian Office and had not become familiar with the practice of the Indian Office nor the character of contracts of that kind.

Q. You have testified to a request upon the part of the Dawes Commission, or some member of the Commission, for leave to withdraw what you and ourselves know here as the McKennon Roll, and that you denied their request? A. Yes, sir.

Q. Do you know when that roll was finally withdrawn? A. No, I do not. I do not know that it was ever withdrawn.

Q. Do you know that it was after the expiration of many years disapproved in toto by the Secretary of the Interior? A. No, I have no recollection of the time that it was disapproved and as to the fact whether it was disapproved in toto or not. The only recollection that I have distinctly in regard to the withdrawal of the McKennon Roll was after Judge McKennon came in to the office and asked permission to withdraw it and I refused it. I called upon Secretary Hitchcock at that time and asked him what I should do. I had no authority to permit attorneys and commissioners to withdraw a document regularly filed, and he said I was absolutely right, but my recollection now is that he suggested that if there was a copy they could take a copy of it or that they should leave a copy in the office, I don't remember which, and I don't recall whether the roll was withdrawn or not.

Q. You have given much credit to Mr. Field and Mr. Howe for having appeared before you or conferred with you, or having appeared before the committee of one or the other houses of Congress in behalf of legislation which ultimately resulted to the benefit of a great many Mississippi Choctaws. Do you recall whether Robert L. Owen did not also appear on numerous occasions before you and have numerous conferences with you on the same subject? A. I have no recollection of that. Senator Owen used to come to the office very often on Indian matters, but I cannot recall that Senator Owen ever mentioned the Mississippi Choctaws.

Q. Mr. Jones, I do not wish to take advantage of your recollection. You deposed in a deposition filed October 4, 1910, in this case, on the first page thereof in answer to interrogatory 4, as follows:

> "I do not know where I first heard the contention that those Choctaws residing in Mississippi were entitled to share in the lands of the tribe in Indian Territory, but I presume it was either called to my attention by either Walter S. Field, Chester Howe or Robert L. Owen, all three of whom were persistently urging the rights of those Indians and persisted in doing so for a long time."

That deposition was given in August, 1909. I will now ask you whether you had not a better recollection at that time of the incidence connected with this Choctaw legislation than you have now? A. Not as far as Robert L. Owen is concerned. I am not sure but that in conversation with Mr.

Owen in regard to Indian matters he incidentally brought up the Mississippi Choctaws, but I have no recollection whatever about his taking part in the interest of those Indians. We may have talked it over, but I have no recollection of it.

Q. When did you qualify as Commissioner of Indian Affairs? A. May 4, 1897.

Q. You have mentioned only Senators Platt and Quay as having interested themselves in the attempt to secure the legislation that was ultimately secured in a modified degree. Do you not recall that Senator Walthal and Senator Money of Mississippi were both active in their behalf? A. I don't remember. I can't recall now that either of those gentlemen ever called at my office. Neither do I recall that I ever passed the time of day with either one of them. I may have, but I have no recollection of it whatever.

Q. I had no reference to conferences with you, but rather to conferences with the committee or with members of the committee. Do you recall on any of the occasions when you conferred with the committee or its members that either Senator Walthal or Senator Money was present? A. No, I do not. Senator Walthal I did not know. I did not know him at all. I do not know that I would recognize him if I saw him on the street. Senator Money I would know. Neither do I remember that they were members of the committee, although they may have been, and I presume they were.

CROSS-EXAMINATION BY MR. RICHARDSON.

Q. Mr. Jones, when you arrived in Washington after your appointment as Commissioner of Indian Affairs in May, 1897, the first two things, practically, to greet you were Messrs. Howe and Field and the Mississippi Choctaw case? A. No, sir; it was not. When I came to Washington in 1897, on the 4th day of May, I took my grip and went on to Chicago and other points and was gone for about three months before I came back. I also visited New York to attend to what was called the lettings of contracts for the Indian Service. I did not get back here until, I think, some time in August afterwards. Then my greeting was just as you state.

Q. But Mr. Howe came first by himself? A. Yes, sir.

Q. Then Mr. Field and Mr. Howe called together?

Q. About how long after the time you returned to Washington in August was it that Mr. Field came in? A. Well, I couldn't tell you the exact date. Mr. Field came there the day I took possession of the office, in a friendly way, not in an official capacity to do any business, but simply on account of our former acquaintance, and when he came in connection with this matter it must have been in August or September, somewhere about that time.

Q. Did they tell you then that they represented the Mississippi Choctaws? A. Mr. Howe did. I don't recall, Mr. Richardson, whether he submitted this so-called contract or not, but I know he said he was interested in their case and was acting as their attorney. I did not know Mr. Howe; I had never seen him before. There was some talk on the part of some of the clerks in the office against him, and I did not pay much attention to him. I referred him, I think, to Major Larrabee, who at that time was chief of the Land Division, and to whom I generally referred such matters. Afterwards, when he brought Mr. Field there, we talked over the situation, and, as I stated before, the thing was not familiar to me. I did not understand anything about it; I did not know anything about Indian matters of any kind. We talked it over and I listened to Mr. Field's explanation of the situation, and, as I say, I didn't know anything about the legal phase of the matter until some time afterwards, and when the office told me that it did not think the Mississippi Choctaws were under our jurisdiction I had talked so long with Mr. Field about them that my personal sympathy was taken up with the character of those poor people and I wanted to help him personally and help the Indians if I could by having some resolution passed that would grant relief.

Q. Did it take your office any considerable length of time to arrive at the conclusion that the Department had no jurisdiction over these people? A. My recollection now is that it did not. I don't remember which one of the clerks, either Mr. Ward or Mr. Murchison, who was handling such matters. I can't tell you as to the month nor within three or four months, but I know they came to my room and told me that in their opinion the Indian Office had no jurisdiction and it was not worth while to consider it.

Q. Did Mr. Howe tell you what authority he had to speak for these people, or Mr. Field, at the time Mr. Howe and Mr. Field called upon you? A. I don't recall that. I think

they told me that they had a contract with some parties interested in it. As I stated, I don't recall whether they presented that particular contract, or so-called contract, at that time or not. They may have done so, but I don't recall it.

Q. Do you recall whether the paper that they presented to you was an executed or whether it was a proposed form of contract which they considered it advisable to enter into? A. I think, Mr. Richardson, that it was the completed contract, although at that time I did not know what a contract with the Indians was, but my recollection is that it was a contract that they or some one else had entered into with these Indians and in which they had an interest as attorneys.

Q. This was shortly after you had assumed the duties of Commissioner of Indian Affairs? A. That was my recollection of it.

Q. It was so shortly after that time that you had not become familiar with these contracts? A. No, sir. I was not familiar with them because of the short time I had been in office, and as you and others know, the Indian Office is largely a matter of tradition and treaty, and it took me a great many years before I became to any extent familiar with such matters.

Q. In your direct examination you stated that Mr. Howe was the one who referred to the contract, although Mr. Field was present and Mr. Howe told you that Mr. Field was interested with him in the contract. Is that correct? A. Yes, sir.

Q. Then Mr. Field's name did not appear in the contract? A. I don't think that I examined the contract sufficiently to know whether it did or not. All the knowledge or recollection that I have in the matter is what you have just stated as to the connection Mr. Field had with this case.

Q. Is it your recollection that at the time Mr. Howe and Mr. Field first came in company to your office that they presented a written contract to you? A. No, I couldn't state whether it was the first time or the second time. I have only a general recollection of the fact that there was a contract. Whether it was the first time or the second time I do not know; I don't remember.

Q. Is your recollection clear about the circumstances about the attempted withdrawal of the McKennon Roll? A. In a general way, yes, but I cannot recall the details.

Q. I believe you have stated that Captain McKennon spent several hours with you in that connection? A. Yes, sir.

Q. And you recommended to the Secretary that permission be not granted to withdraw that roll? A. Yes, sir.

Q. Do you remember when this was? A. Well, it was during the time that Judge McKennon was in Washington and talked the matter over informally with me. I do not think I had expressed myself in writing, but we discussed the situation personally, and I gave the Secretary my opinion that I did not think it was the proper thing to do.

Q. Do you know whether the Commission sought on two different occasions to withdraw the roll? A. No, I don't know whether there were two or three. They were somewhat persistent in their efforts to have the roll withdrawn, but whether it was one or two or three occasions I can't recall now.

Q. Do you know when Captain McKennon resigned as a member of the Dawes Commission? A. No, I don't recall.

Q. Do you recall the submission to Congress of the agreement which was known as a supplemental agreement and satisfied by the Act of March 1, 1902? A. Yes, sir.

Q. Was that submitted through your office? A. I can't recall that I was consulted personally, as I stated before, about it, but I think it was. I would not be sure as to that, however.

Q. Didn't the Interior Department recommend that that agreement be ratified in the form it had been prepared and signed by the Dawes Commission? A. I couldn't tell you that. The record ought to show it, but I don't recall.

Q. Do you know whether Mr. Hitchcock or whether some official in the Secretary's office having charge of Indian matters was called before the Senate Committee in connection with the ratification of this agreement? A. I don't know; I don't recall ever meeting him there.

Q. Were the relations between the Senate Committee and the Secretary's office at that time considered cordial? A. Not very, no. I don't want that to go in as an official statement, because that is my own opinion. I am sure, however, that the relations were not exactly cordial—that is, I know that the relations between the chairman of the committee and the Secretary were not cordial.

Q. I understood you to say that Senator Stewart, who in 1902 was chairman of the Senate Committee, was unfriendly to the provision for the relief of the Mississippi Choctaws? A. Yes, sir.

Q. Do you by that statement mean that he was unfriendly to the provision as it was drafted in the original treaty or to the provision which now appears in the statute? A. Well, I can't remember that except that I got the impression—and I think I was right—that Senator Stewart was unfriendly to the whole proposition. He sometimes expressed himself, if you will recall, in rather a forcible way, and he told me one time that he thought the whole matter ought to be thrown out, that it had no merit whatever, referring to the Mississippi Choctaw matter. This expression was not made in the committee; it was personal between the Senator and myself in our discussion of the matter.

Q. Do you recall whether or not Mr. Field and Mr. Howe were at the time these hearings were held in the Senate Committee, which resulted in the passage of the Act of July 1, 1902, were seeking to amend the original agreement or to secure its adoption? A. My recollection is that they were trying to secure its adoption.

Q. Do you know whether or not the original agreement was amended in any material particulars? A. I think it was. That is my recollection.

Q. Do you know who advocated these amendments? A. Senator Quay and Senator Platt. They advocated the original agreement, but the agreement was changed somewhere and it was not discovered until the very last moment that the change had been made, and I think, as I said before, that Senator Quay became very indignant and I believe he called on Senator Platt and insisted that the original provision be inserted in the bill. My recollection further is that Senator Platt insisted on this going in just as it was.

Q. Is it your personal recollection that this text of the original agreement was followed, or whether it was amended by that statute? A. Which statute?

Q. The act before you, July 1, 1902? A. My recollection is that the original agreement was substantially just as it is here, although I have no recollection. I have no copies of the original agreement, but I think substantially it was just as it is here. That is my recollection.

Q. Do you recall the fact that while you were Commissioner there were a great many applications pending in your office known as the Mississippi Choctaw application for citizenship? A. Yes, sir; there were.

Q. Do you recall what, in a general way, disposition was made of these applications and the proofs which had been taken in support of them up to the time of this act of July 1, 1902? A. No, I don't remember. There is no use in my trying to explain that because my recollection is quite hazy on that matter and I don't remember what the rules were.

Q. Was it not a fact that of all the applications which had been acted on at that time, substantially every one had been rejected? A. Practically all of them, I think, almost without exception.

Q. To refresh your recollection I will ask you if you don't recall it to be true that only five out of several thousand individuals had been ordered to be enrolled? A. As to the number I don't recall, but I know that practically all of them were rejected.

Q. Was it not a fact that those claimants had been rejected because it was extremely difficult if not practically impossible for these people to prove after more than 70 years that their ancestors had complied with the requirements of article 14 of the treaty of 1830? A. I think that is true. It is true in this case, as in every other Indian case. An Indian cannot prove but very little, if anything, especially after such a long lapse of time, and being scattered so, and I think it was the lack of proof as much as anything else.

Q. Wasn't this situation peculiarly true of the full blood Indians? A. Yes, sir; the full blooded Indian in this case, as in all other cases, is practically helpless. Some one must take up his case or he will lose all of his rights.

Q. You remained Commissioner for several years after the passage of this act of July 1, 1902, during which time the enrollment of the Mississippi Choctaws and the action of the office upon the various applications for enrollment was continued. Was this situation with respect to proof changed by your office except by the provisions of section 41 of the act of July 1, 1902? A. Well, I don't recall the transaction after that. To be frank with you, after this act was passed

I thought that the adjustment was simply a matter of routine, and I did not take much interest in it. I was very much interested in getting this passed, and I thought by this act the Indians had been protected and that the matter of proof, the routine matter of enrollment, was left largely to outside matters. I presume that my attention was called to certain phases of it, but I did not take a great deal of interest in it because I thought my work was done so far as they were concerned, and I don't now recall any of the details.

Q. Are you familiar with the legislation which had preceded this act with reference to the Mississippi Choctaws? A. No, sir; I am not. I don't remember that.

Q. Do you recall the provision of the Curtis Act, which directed the Commission to identify the Mississippi Choctaws? A. I remember the Curtis Act, yes.

Q. That was the provision under which Captain McKennon prepared what is known as the McKennon roll of March 10, 1899? A. Yes, sir.

Q. Are you familiar with the provision of the act of May 31, 1900, which directs that any Mississippi Choctaw identified as such by the Dawes Commission may at any time before the final closing of the rolls remove to the Choctaw-Chickasaw Nation and acquire the rights of citizenship? A. Yes, I remember that there was some provision of that kind in the act.

Q. So that prior to the act of July 1, 1902, the Mississippi Choctaws had a forum for the determination of their identity, and had a law under which they might remove at any time before the final closing of the rolls and acquire their Choctaw citizenship, and were only prevented from succeeding in establishing their rights by these decisions on the question of proof of their heirship and the status of their ancestry, which made it practically impossible for them to secure relief. Isn't that a fact? A. I think it is. That is my recollection of it.

Mr. Anderson: That is objected to because the witness is requested to give an opinion upon a question of law, which, if proper, should be before the court.

Mr. Richardson:

Q. Then, Mr. Jones, referring again to section 41 of the act of July 1, 1902, I will ask you whether or not there is

any provision in that section beneficial to the Mississippi Choctaws except the provision which gives to full bloods the right to establish their status as descendants of 14th Article claimants by mere proof that they are full bloods and that their ancestors lived in Mississippi? A. I do not think there is any other provision. I think, as you stated, that this established a forum where they could establish their identity and file proofs, but it doesn't give them any help as far as I can see.

Q. Mr. Jones. I referred in my second preceding question to the fact that the Curtis Act established a forum for their adjudication of their claims, that the act of May 31, 1900, gave them the rights of Choctaw citizenship conditional upon their removal and having been identified under the Curtis Act. Now what I meant by my last question was to ask you whether any part of this section 41 conferred a benefit upon the Mississippi Choctaws and gave them anything that they did not already have, except the portion of which I will now read:

> "and in the disposition of such applications of full blood Mississippi Choctaw Indians * * * shall be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the said treaty of September 27, 1830, and identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or appear to the advantage of any applicant who is not a Mississippi Choctaw of the full blood," etc., which is known as the full-blood rule of evidence?

Mr. Anderson: That is objected to as asking for the opinion of the witness on a question of law.

A. No, sir; in my opinion, it did not.

Mr. Anderson: That is objected to, as the witness is not an expert in law.

Mr. Richardson:

Q. State, then, whether or not it is your recollection that the fight which was made in connection with the securing of the passage of this act of July 1, 1902, centered on that particular part of the agreement?

Mr. Anderson: That is objected to as leading.

A. My recollection is that it was.

MR. RICHARDSON:

Q. Now will you further state whether or not, in your recollection, there was any such provision as that originally submitted by the Secretary to Congress by ratification? A. I don't recall whether it was or not. It is so long ago that I don't remember.

Q. Do you recall what was the attitude of the Choctaw Nation with respect to that provision? A. No, I don't remember. I know that the representatives of the Choctaw Nation wanted to get everything they could.

Q. For the Mississippi Choctaws, you mean? A. Yes, sir. That is, the attorneys for the Mississippi Choctaws.

Q. I am speaking of the attorneys for the Choctaw Nation, who were Mansfield, MacMurray and Cornish? A. I don't remember what their attitude was.

Q. Did they go to you about this proposition at all? A. I think Mr. MacMurray did several times, but as to what the conversation was, I don't remember. They visited my office a number of times, but generally on other matters.

Q. Do you recall whether any members of the Dawes Commission were in Washington at the time of the hearings on this act? A. I think they were.

Q. Do you recall whether they were advocating this full-blood amendment? A. No, I don't remember. The only thing I do recall is that they were opposed to considering anything favorable to the Mississippi Choctaws, but I don't remember what their attitude was in regard to this.

Q. Well, isn't that the only thing in that act which is favorable to the Mississippi Choctaws? A. It seems to me that is the only thing. Judge McKennon is the only man who discussed the situation with me thoroughly. Mr. Bixby was here a good deal, but he and I disagreed right on the start as to the rights of the Mississippi Choctaws, and we agreed to disagree, so he didn't bother me, but he spent a great deal of time before the committee of Congress and I know he was hostile to the Mississippi Choctaws.

Q. Didn't both Bixby and MacMurray devote more of their time and attention to the Secretary's office than to your office? A. Yes, Mr. Bixby seldom came there after we had this disagreement. Mr. MacMurray and I were always friendly enough, but he spent most of the time in the Indian Department of the Secretary's office. Judge Van Devanter

and Mr. Bender, as I recall now, were in the Indian division of the Secretary's office and he spent most of his time there.

Mr. Richardson: That is all I have.

CROSS-EXAMINATION BY W. W. WRIGHT.

Q. It has been testified to in the record that while the treaty of July 1, 1902, was under consideration by the committee of Congress having that legislation in charge that Chester Howe appeared before one or more of those committees and submitted oral arguments in support of an amendment in behalf of the Mississippi Choctaws. Do you have any personal knowledge of Mr. Howe's appearance before either of those committees at the time the act of July 1, 1902, was under consideration? A. No, I have not. As a matter of fact, I have no recollection of being in the committee of the House when this matter was discussed in any of its phases. My activities, if you can call them such, were entirely in the Senate Committee. Mr. Howe may have been there, but I have no recollection of it.

Mr. Wright: That is all.

CROSS-EXAMINATION BY GEORGE M. ANDERSON.

Q. When did you say Chester Howe first came to you about the rights of the Mississippi Choctaws? A. I think it was in the fall of 1897.

Q. Of course you didn't examine any papers he had on that matter because you knew you had no jurisdiction over the Mississippi Choctaws. Isn't that right? A. No, I didn't know at that time whether we had or not. I didn't know anything about the case. He may have submitted some documents, but I have no recollection of it.

Q. Now, as a matter of fact, Mr. Jones, Chester Howe, in a petition which he prepared just before his death and swore to and sent to me, and which is on file in this case now, states that he first heard of the Mississippi Choctaw matters during the discussion of the act of 1898, and that he never took any active part in Mississippi Choctaw matters until he heard that Captain McKennon had made a roll of them in 1898,

and then it seems he got busy. That is what he said himself. You didn't know he had made such a statement as that, did you?

Mr. Ballinger: Before the witness answers, I want to note an objection. I object to this question because it is not a question, but a statement as to something that Chester Howe has said, about which this witness is not asked as to his personal knowledge of what Chester Howe has said, but as to his personal knowledge of the correctness of the statement.

Mr. Anderson: I asked him before if he knew anything about this statement.

Mr. Ballinger: I object to that because you can ask this witness here if he knows as a matter of fact if that was the case, but you cannot ask him whether he knows whether or not Chester Howe made such a statement.

A. No.

By Mr. Anderson:

Q. You had never seen his petition before you testified? A. No, sir.

Q. Did you know that two witnesses have testified in this case, W. H. Arnold and James E. Arnold, to the fact that Chester Howe had never met M. M. Lindly, with whom it is alleged the band contract was made? You never knew that, did you? A. I did not know, neither have I heard of any statement of testimony made by any witness connected with this case, directly or indirectly, except my own.

Mr. Anderson:

Q. Mr. Jones, did you ever read the recommendation of the Dawes Commission in the report dated March 10, 1899, upon the McKennon Roll, which was prepared, by the way, by Captain McKennon, in which it was stated that the only fair way to enroll the Mississippi Choctaws was to accept those who were of the full blood without further examination as to ancestry? A. I presume that I did, but I have no recollection of it.

Q. Did you know or have you ever heard that that provision which was practically inserted in the supplemental Choctaw agreement of July 1, 1902, was placed there by Assistant Attorney General Van Devanter?

Mr. Anderson:

Q. Did you know anything about that fact? A. No, I did not.

Q. What were the rights of the Mississippi Choctaws, as you understand them, which were presented to you by Mr. Howe and Mr. Field? A. I cannot go back into the details of that matter, Mr. Anderson, because it is so long ago and is so mixed up with other matters that I don't believe I am able to discuss it with you intelligently.

Q. Now, I believe you have stated that you were Commissioner of Indian Affairs from some time in March, 1897? A. No; May, 1897.

Q. From some time in May, 1897, to the 1st of January, 1905? A. Yes, sir.

Q. During that time Mr. Walter S. Field was quite active in the Osage Indian affairs, was he not? A. Yes, sir.

Q. Did you know anything about the contract that he made with Wesley M. Dial in 1897 and 1898, by which he was to procure tentative allotments of Osage lands? A. I have no recollection of that contract.

Q. Did Mr. Walter S. Field ever come to you in 1902 or 1903 to ask for an order allowing the Osage Indians to take tentative homesteads on what is known as the Osage Pasture Lands, which had been leased to cattlemen? A. As to the details of that I do not remember. I know that Mr. Field did mention the matter to me, but I do not know that there was any action taken. Neither do I recall that there was anything done about it. I think, though, that there was some tentative allotment made on the pasture lands, but I don't remember whether Mr. Field was active in that or not.

Q. As a matter of fact, wasn't an order issued by you allowing these allotments to be taken in those lands leased for pasture? A. I think there was something of that kind, but I cannot recall it now. It is only a general impression I have.

Q. Do you know anything about a contract that was entered into by Wesley Dial and Baker and Prudon, by which Mr. Field was to obtain homestead allotments in the leased pasture lands, and for which he received $2,500 in cash from those people? A. There may have been such a contract, but I have no recollection of it. The only name that I remember in connection with the matter is Dial. I don't know that I ever met Dial, but I remember the name, although I don't remember in what connection.

Q. Did you know that it was afterwards charged that Mr. Field obtained these homestead allotments for perhaps 200 Osage Indians who afterwards gave leases to him?

Mr. McCurtin: I want the record to show that I do not appear here at this time as attorney for the Mississippi Choctaws, but I appear only on account of the principal chief of the Choctaw Nation, having been served in the original Mississippi Choctaw suit.

Mr. Anderson:

Q. You have never been employed by the Mississippi Choctaws? A. No, sir; I never have.

Q. Did you know that Dial, Baker and Prudon paid $25 for each homestead they secured? A. I have no recollection of any such arrangement, Mr. Anderson. That is not stating that there was not one.

Q. And that these men afterwards went to the cattlemen and compelled them to give up large sums of money? A. I don't know anything about that.

Q. It was because of these charges against Mr. Field that his disbarment proceedings were brought, was it not? A. I can't agree with that at all. I think it was on account of the personal prejudice of Mr. Hitchcock.

Q. Against Mr. Field? A. Yes, sir.

Mr. Ballinger: To what do you refer, to the suspension? There was no disbarment.

Mr. Anderson: It is the disbarment proceedings I am talking about.

Q. Did you ever hear that Mr. Walter S. Field was doing business with the Indian Office upon the strength of alleged influence with you at the Indian Office? A. I never heard of it. If I had I should have denied it.

Q. Did Mr. O. A. Mitscher ever come to see you in 1902 or 1903 with regard to getting an order allowing tentative homesteads to be taken in the lands leased to cattlemen for pasture?

Q. Do you know who O. A. Mitscher was? A. Oh, yes; he was the agent at one time in the Osage Reservation.

Q. During what time, do you know? A. No, I don't remember the years. I think he followed Pollock there.

Q. Do you know why Mitscher was afterwards dismissed from the service? A. No, I don't remember whether he resigned or whether he was removed.

Mr. Anderson: The record will be filed. I want to connect his testimony with something I am going to file hereafter.

Q. Do you remember Mr. Walter S. Field coming to you on or about January 10, 1903, and asking you to order Agent Mitscher to keep back the money of the children of Green Yergen until they were 21 years of age? A. No, sir; I don't even remember the name.

Q. You didn't know, of course, that Mr. Field had been paid $500 for that? A. No, sir; I knew nothing of that—that is, I don't remember it now. I may have known something about it at that time.

MR. ANDERSON:

Q. And afterwards received $400 more, making in all $900? A. I have no recollection of it at all.

MR. ANDERSON:

Q. Did you know that Agent Mitscher and Mr. Field were brothers-in-law? A. No, sir; I did not. I knew they were neighbors in Wisconsin, but I did not know that they were related directly or indirectly.

Mr. Ballinger: It is understood and agreed that all the questions now and hereafter to be asked on this and kindred subjects are subject to the objection of counsel for Walter S. Field, and that the notice heretofore given that the court will be asked to assess the costs against the Government applies to all this testimony.

A. I might say that I do not know now that they are brothers-in-law or ever were brothers-in-law. I never knew Mr. Mitscher until I came to the Indian Office.

Mr. Field: And they are not brothers-in-law.

MR. ANDERSON:

Q. Do you know whether they are any relation at all? A. No, sir.

Q. You say you knew they came from the same place in Wisconsin? A. Yes, not far from where I lived, but I don't recall of ever hearing of or meeting Mr. Mitscher until he came here to the office.

Q. Was it ever called to your attention while you were Commissioner of Indian Affairs that Dial, Baker and Prudon got leases from the Indians of their tentative homesteads at $25.00 a piece, and had those leases approved by Agent Mitscher and then had them located where the water supplies

of the pastures were, and then went to the cattlemen and threatened to fence them off from the water if they did not pay them large sums of money? Was that ever brought to your attention? A. I don't remember the details connected with that transaction. I remember, in a general way, Mr. Anderson, that there was something of that kind. I remember also making up my mind that the Indians were entitled to do just what they did. I believed so then and I believe so now. They had vested rights in that reservation, and if they wanted to take out allotments they had a perfect right to do so. I don't remember anything about Mr. Field's interest in the matter, however.

Q. Do you remember whether it was through your office that Agent Mitscher was directed to collect the money from the cattlemen who leased these pastures and deduct therefrom the amount that would have been paid for the leases of Dial, Baker and Prudon, and the money for such homestead leases was paid over to said Dial, Baker and Prudon, instead of being turned over to the credit of the Osage Nation? A. I have no recollection of the particular transaction, as I stated before, but if they did it I believe it was right. I believe so now. If those Indians had taken out their allotments they were entitled to whatever revenue they could produce out of the allotment, and whether it was the cattlemen or any one else opposed to them.

Q. But didn't the Nation suffer by the payment of these tentative homestead allotments to Dial and others? A. If Dial and others had the right to take up their allotments they had the right to the revenue, and no one had any right to object.

Q. As a matter of fact, didn't the Osage Nation hold its land in common as tribal property and these tentative homesteads were afterwards held to be void? A. I don't think they were. I don't recall it.

Q. By your office? A. At that time the Osage Indians, the members of the Osage Tribe, had taken individually large tracts of land. There were two or three of them, I have forgotten their names—two brothers, Jim and Peter—took up large tracts of land and operated them themselves, either put their own cattle on or leased them to the cattlemen, and if tentative allotments were made to the others they were certainly put on the same basis with other members of the tribe in order to conduct their business. Some of them were more

intelligent than others, and, naturally, took advantage of their knowledge of the land and got what they could out of the allotments when they secured them. I don't think I had any knowledge that anybody outside of the members of the tribe having benefited by these allotments.

Q. There was no provision of law that you know of for the allotment of Osage lands in severalty, was there? A. No, sir; but a great deal of the transactions of the Indian Office were conducted outside of any particular legislation. It was a matter of tradition and matter of tribal agreement and policy in many cases.

Q. Mr. George A. Ward has testified (June, 1911, page 20 of the printed record) that after a man has been suspended from practice before the Interior Department he cannot transact any business or receive any information from that department. Is that true? A. I do not recall. I recall in Mr. Field's case that I told the Secretary distinctly that as far as I was concerned I was going to give Mr. Field what information I could legitimately, and I asked the clerks there to do the same. I thought he had not been treated right, and did not think it was the proper thing for me to do to cut a man off from the privileges of the office when I could not see that he had done anything that merited such treatment. We had some words about that, but I told him distinctly that I would resign first; that until he could show me that Mr. Field had done something illegal or morally wrong I would give him all the information I could.

Q. Did you ever examine the disbarment proceedings against Mr. Field? A. Only in an informal manner, but I remember at that time the general character of the accusations made against him, and I do not believe they were true.

Q. Mr. Field acknowledged himself that he had this contract with Dial, Baker and Prudon, didn't he? A. I don't remember that Mr. Field ever told me he had such a contract. I presume that the papers were there, and I remember that I talked the whole situation over with Judge Van Devanter, and I was not convinced that there was any merit in the case.

Mr. Ballinger: Do you mean merit in the case or merit in the charges?

A. In the charges, no. I do not pretend to put myself up against an attorney on legal points, but I exercised what little common sense I had, as a matter of fair play, and I think I was right.

Mr. Richardson:

Q. You knew that Mr. Field had collected large sums of money from these men whom I have named for procuring these leases from the Indians who had tentative allotments, didn't you? A. I presume that I knew, if that was the amount you speak of, $25.

Q. $2,500? A. I didn't know anything about that.

Q. That he collected large sums, as much as $1,700? A. No. I remember he did collect something from these individual allotments for the purpose of transacting their legal business for them. I thought that was legitimate and I think so now.

Q. Was it your knowledge that he collected $50 apiece from each individual for whom he procured homestead allotments? A. I thought it was $25. Perhaps it might have been $50.

Q. But those other large sums obtained from individuals, you don't know about them? A. No, sir; I don't know anything about them.

Q. In your examination this morning you have stated that in your opinion practically all the work done in this case for the Mississippi Choctaws in establishing their rights was done by Messrs. Howe and Field. In your examination of August 11, 1909, as you had spoken of Mr. Howe as having taken somewhat the lead in the case, I asked you: "Did you find that Chester Howe was of any particular advantage in urging the passage of legislation?" You answered: "He was active enough, but whether it was effective or not I don't know." A. That's what I say now. As far as I am personally concerned, and as far as I know, in the Indian Office and also in the Senate Committee, Mr. Field and Mr. Howe did all of the work with which I was acquainted. And I want to state further that as far as this case is concerned the Mississippi Choctaws would be in the same condition today that they were twenty years ago if it were not for the efforts of these men with the Senate Committee and Senator Platt and Senator Quay.

Q. How early, in your opinion, did Senator Quay begin to take an interest in these Mississippi Choctaw matters? A. I can't remember the year.

Q. How soon after you entered upon the duties of your office? A. It was the same year. The first time I saw Sena-

tor Quay, the first time I met him, was when Mr. Field—I don't remember whether Mr. Howe was with him or not—Mr. Field brought him to my office about this matter.

Q. How long was that after you became Commissioner? A. A year or two years, I don't remember exactly. It was some little time after.

Q. How long was it until you saw Senator Platt? A. I used to see Senator Platt once a week and sometimes oftener. I used to rely on Senator Platt as my adviser in Indian matters. He used to call at my office and I would go to his office very often.

Q. As you understood it, was it not the duty of the Indian Office to urge upon Congress all legislation necessary to give the Indians their rights guaranteed by treaties? A. Theoretically that is true, but if you know about the conduct of the Indian Office and also Congress, you know the Indians would be today without any rights or any relief unless some one had made it a personal matter. Congress will not act on practically any matter connected with the Indians unless somebody makes a special effort to call their attention to it. That is true almost without exception, and the Indians Office is the same way, more or less. Unless somebody follows up the case in the Indian Office and in the Secretary's office the Indian will be without any relief.

Q. Now will you please point me out some records of the Indian Office which will show the efforts which you speak of in establishing the rights of the Mississippi Choctaws? A. One thing that I can tell you—I can't recall the date or anything like that, but the efforts that I have already stated, the efforts of Mr. Field and Mr. Howe with the two Senators mentioned, and also in the committee.

Q. Is there anything on record in the office that shows any action you took? A. I don't know that there is. Mostly it was personal work.

Q. Personal talks? A. Yes, and I found it was generally more effective. You could recommend until doomsday, but unless you followed it up with personal solicitations you would get no action on it. It was the same then as it is now, and I don't blame the Indians for employing attorneys. I think they are entitled to, and unless they do they won't get relief and they won't get their rights. That is recognized in Congress now, and especially in the House Committee.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. In answer to a question asked you by Mr. Richardson you made the following statement, in part: "Mr. Howe did. I don't recall, Mr. Richardson, whether he submitted this so-called contract or not." I ask you now to what time did you then refer? A. I don't remember whether it was the first time that Mr. Howe called or whether it was a subsequent call. I think the first time he called he simply came in to pay his respects.

Q. Mr. Howe did then, as a matter of fact, submit a contract with either a band or a number of Indians to you at that time or at some time immediately subsequent thereto? A. Yes, sir. I may add also that I don't think I looked over the contract because, as I stated, I was not familiar with Indian contracts or the procedure of the Indian Office. I think I inspected the contract and probably submitted it to some of the clerks in the office, but I can't locate the exact time.

Q. Was that subsequent to your trip to McAlester or before that? A. I don't recall the year I was down to McAlester, but I think it was before that. I think I went down to McAlester in the winter time—I know I did, because I remember the Secretary wanted me to go down there to look over the prisons that they had for Indians, with the object of asking Congress to make an appropriation for the purpose of building prisons, and when I came back Congress was in session, and I called on Representative Cannon, who was at that time chairman of the Committee on Appropriations, and urged that an appropriation be made for the purpose of putting up these buildings. That is why I recall that it was in the winter time. It may have been in the winter of 1898-99, but I can't recall exactly.

Q. When Mr. Howe left this contract with you, did you submit it to some member of your department for an opinion? A. Yes, to some clerk. That was the time I was told that the Mississippi Choctaws were not under the jurisdiction of the Indian Office.

Q. You mean you were told that by a clerk in the law division? A. Yes. I have forgotten which one it was.

Q. What were your personal relations with the members of the Senate Committee on Indian Affairs in the year 1902? Were they cordial? A. Yes, unusually so—on my part, at least, and I had no reason to think the contrary on their side.

Q. You spoke about the "original agreement" of 1892 and its enactment into law substantially as originally agreed upon. I call your attention to the fact that the original agreement was a paper or agreement prepared in the Indian Territory by the Commission and subsequently transmitted to the Department, and I now ask you if when you referred to the "original agreement" you referred to some provision in an agreement drafted by this Commission in Indian Territory and subsequently transmitted to the Department? A. Yes, I think that is true. I think the original agreement was prepared by the Commission.

Q. Now, then, did this provision for the benefit of the Mississippi Choctaws appear in that original agreement? A. I can't recall that. I don't remember, but I don't think it did.

Q. For the purpose of refreshing your memory, do you not recall that it was over the provision that they had included, and which attorneys, including Howe and Field, deemed insufficient to protect the rights of the Mississippi Choctaw Indians, that the controversy in the Department and the Capitol arose?

Mr. Anderson: I object to that as leading, outrageously so.

A. The only recollection I have is that the Indian Office objected to the agreement as sent up by the Commission. Whether it was at the suggestion of Mr. Howe or Mr. Field, or whether it was on their own initiative I don't remember.

By Mr. Ballinger:

Q. I will ask you, Mr. Jones, as to what the custom was with reference to amendments or recommendations transmitted by the Department to Congress, where the first draft originated, to whom it was transmitted and through what hands it passed prior to its submission to Congress.

Mr. Richardson: I want to reserve an objection to that question. We object to any parole testimony as to matters which are of record and having already been filed in this case.

A. The process while I was in office was that we prepared the legislation or whatever recommendations we wanted to make to Congress and sent them over to the Secretary's office for his approval or disapproval and any suggestion that he might make, and he then would send them up to Congress. The committee, at least of the House, sent down to me personally several times and wanted me to send recommendations there to them on certain matters, which I could not do.

I would have liked to have done it, but the rules of the Department were such that I was required to send all recommendations to Congress through the Secretary's office, which I think was proper.

Q. Then where your office had a personal interest in the matter, did you usually follow that up by other communications or by personal visits? A. By personal visit. As a matter of fact, there was considerable friction between the Indian Bureau and the Indian Division in the Secretary's office. If I recommended anything special and I found out that the Indian Division were not favorable to it I generally carried it over myself in person to the Secretary and explained it to him before the Indian Division got hold of it so as to prejudice the mind of the Secretary. As a matter of fact—and it was proper—the Secretary relied on the Indian Division of the Department and not so much on the Indian Office, although invariably in my case the Secretary would always call me over if he found that the recommendation of the Indian Office ran contrary to the recommendation of the Indian Division, and we would discuss it personally, and I don't recall but once or twice the Secretary going contrary to the recommendation of the Indian Office when I called on him personally to explain the situation.

Mr. Anderson: This answer is objected to as being irrelevant and immaterial.

A. I might add also that if Judge Van Devanter objected to some legal feature of the recommendation that we made or the bill that we proposed, he invariably called me over, and sometimes I would take a clerk in the Law Department over with me and we would discuss it informally. If he made the changes that he wanted to he would always send it back to the Indian Office for the purpose of having it put into shape. That was the universal practice. I don't remember a single instance but what that was carried out.

By Mr. Ballinger:

Q. Do you recall the circumstances of the retirement of Commissioner McKennon? A. No, I do not. I may have known about it at the time, but I don't recall it now.

Q. For the purpose of refreshing your recollection, do you recall any arrangements that Mr. McKennon had made with the firm of Mansfield, McMurray and Cornish to become a

member of the firm in the representation of the Choctaw and Chickasaw tribes? A. I have heard of that, but I don't know that it is true.

Mr. Anderson: That is objected to as leading.

By Mr. Ballinger:

Q. Did you notice any change in Mr. McKennon's attitude toward the Mississippi Choctaw Indians after about December, 1909? A. No, I don't remember about that, Mr. Ballinger. The only thing I do recall is that as far as the intercourse with the Indian Office and with me personally is concerned he was not friendly to the Mississippi Choctaws.

Q. Mr. McKennon, who was chairman of the Commission, was succeeded by Mr. Bixby, was he not, as chairman? A. My recollection is that Mr. Bixby was chairman while Mr. McKennon was a member. I may be mistaken, but I think that is true.

Q. Mr. Jones, reference has been made to the report of the Dawes Commission, submitted under date of March 10, 1899, containing what was known as the McKennon roll of Choctaws. I will call your attention to the following language, which appears in that report, and which appears on pages 837 and 838 of the brief filed by Ralton, Siddons & Richardson in the now pending case. The Commission says:

> "The full blood Choctaw people, who have for nearly three-quarters of a century continued to reside in Mississippi as recognized citizens of that State, speaking the Choctaw language as fluently as did their fathers, who have acquired only such knowledge of the English language as enables them to transact ordinary business with the white people of the country, cannot now, therefore, reasonably be required to show the purposes of their ancestors by stronger proof that the facts of such residence and such recognition as citizens of the States, and the further fact that they are rescinded from the Choctaws living there at the date of said treaty.
>
> "The Commission, therefore, finding it impossible to trace the full blood Choctaw now residing in the State of Mississippi, bearing an English name, with any degree of certainty to his ancestors bearing Indian names, and to establish the fact that such ancestors performed the duty of signifying to the United States agent within the limited period their intention and desire to remain and

become citizens of the States, has believed it to be its duty to report the names of all full blood Choctaw Indians who might appear before it in said State for identification as Mississippi Choctaws, and it accordingly makes such report, having taken the names and identification of each of such persons and prepared a schedule of them from the data obtained by the Commission recently within said State, which schedule accompanies this report as a part hereof."

I now ask you whether that position taken by the Commission in March, 1899, namely, that the full blood Indians were deemed 14th Article Mississippi Choctaws, was thereafter changed, that is, that their attitude was thereafter changed with reference to the enrollment of full blood Mississippi Choctaws?

Mr. Anderson: That question is objected to, first for referring to the brief as containing the report of the Commission of March 10, 1899, when the same had been set out in the record and appended to the deposition of ex-Commissioner McKennon. Second, because the question calls for the opinion of the witness on matters which should be shown, if at all, by the record.

A. I am not sure that I have the gist of your question, Mr. Ballinger, but my recollection of that report and also the attitude of the Commission, as I stated before noon, was hostile to the Mississippi Choctaws, and when they were ordered or directed by the Department to make up this roll they made it up on what is called the full blood basis; that is, they would enroll any of these Indians that were full bloods. I don't know that they had at that time any rule except the appearance of the Indian or whatever traditions they might secure in making the roll. The fact that when they asked that this roll be withdrawn—it must have been after that, but I have forgotten the exact time—they went to work and made out another roll and discredited the qualifications that they had established in the original roll, and I think they established a rule requiring the Indians to prove their rights under the treaty; that is, that they must prove whether they were full bloods or not.

Mr. Ballinger:

Q. That is, they must prove that they were descendants of persons who were beneficiaries under the 14th Article? A.

Yes, that is my recollection of it. While, in a way, that might be all right, still, they had gone back on their own record in the original roll, and it got to be somewhat mixed. I have forgotten the exact details, but I know that was the gist of the matter at that time. Then an item in the appropriation bill in 1902 provided that the Indians could prove—I have forgotten just what the rules were, but they could prove, anyway, that they were entitled to benefit under the act.

Q. The act of 1902 provided that any person who was a full blood Indian should be deemed to be a descendant of a 14th Article claimant? A. Yes, sir.

Mr. Anderson: We object to Mr. Ballinger testifying for the witness, and ask that his answer may be stricken out.

A. It is a little bit hazy in my mind, but that is my recollection of it, that the rule of evidence was changed from that of the original order when they were compelled or required to make another roll.

Mr. Ballinger: Now, Mr. Jones, at the time the report containing the roll, and which report was dated March 10, 1899, was submitted to your office, there was then no authority of law for the enrollment of any Mississippi Choctaws, was there? A. I don't recall that there was.

Mr. Anderson: That is objected to because it is a matter of law.

Mr. Ballinger:

Q. Now, afer the roll was submitted, the act of May 31st, 1900, 31 Stat. 236, was passed, which contained the following provision:

> "That Mississippi Choctaws duly identified as such by the Commission to the Five Civilized Tribes shall have the right at any time prior to the final approval of the rolls of the Choctaw-Chickasaw Nations by the Department to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

Now, was it after or before the enactment of the act of May 31st, 1900, that the Commission requested permission to withdraw the rolls submitted March 10, 1899? A. I think it was after that. I know that Judge McKennon came to

my office one time and asked that they be permitted to withdraw this roll; that they could reduce the number by hundreds at that time, and he thought it was only fair that they should be permitted to withdraw that roll and make a new one.

Q. Did Mr. McKennon or Mr. Bixby or any other members of the Commission at about this time advise you that it was their intention to reduce the rolls of membership of the Choctaws and Chickasaws by about 5,000 persons?

Mr. Anderson: The question is objected to as leading.

A. I don't remember the particular figures, but it was a very large number. He said it could and ought to be reduced, but I don't remember the exact number. That was Judge McKennon, not Mr. Bixby. Mr. Bixby, after he and I had the first tilt, did not come to the office at all. All this transaction was between Judge McKennon and myself, as he took a leading part as a member of the Commission, in the Mississippi Choctaw case.

Q. You will observe that the act of May 31, 1900, was the first act that authorized the enrollment and allotment of lands to the Mississippi Choctaws. Now, it was subsequent to that act that the Commission requested authority to withdraw the rolls submitted March 10, 1899, was it? A. Yes.

Mr. Anderson: That question is objected to as leading.

MR. BALLINGER:

Q. Now state what time, relative to May 31, 1900, the Commission changed its recommendation and position with reference to the rule of evidence that entitled a full blood Indian to be enrolled as a 14th Article claimant?

Mr. Anderson: That is objected to as leading.

A. I don't remember the exact time, but it was after they had submitted his roll that they went down there and made a new roll, which was the result of this act of 1902 being passed, compelling them to have these Indians appear and qualify under the rules of the Department.

MR. BALLINGER:

Q. Now, when the bill that subsequently became a law was under consideration in the Department and before the committees of Congress, do you know of any member of the Dawes Commission appearing before the officers of the Department or before this Congress and urging the inclusion of this rule of evidence by which a full blood Mississippi

Choctaw Indian was deemed to be a 14th Article claimant, which was in accord with their recommendation in the report of March 10, 1899—

Mr. Anderson: That question is objected to as leading.

A. I don't know what proceedings were had before the committees. I know Judge McKennon came before the Indian Office in regard to the matter, but I don't know whether he appeared before the committees of Congress or not.

Mr. Ballinger: Was he, in 1902, opposed to the recognition of the full blood Indian as a 14th Article claimant? A. Yes, he was always opposed to it.

Q. Do you know what the attitude of Mr. Bixby was at that time with reference to the matter? A. As I sated before, they were agreed on everything. Mr. Bixby was at one time violently opposed to the matter, but whether he experienced a change of heart I don't know. The last time I had any conversation with him he was very much opposed to it.

Mr. Anderson: When was that conversation? A. In 1900, in the summer, I think. I can't remember the exact date, but it was about that time.

Mr. Ballinger:

Q. Then, so far as you know, all the members of the Dawes Commission were in 1900 and subsequent thereto opposed to legislation that would recognize the Mississippi Choctaw Indians?

Mr. Anderson: That is objected to as leading.

A. Yes.

Mr. Ballinger: That is all.

RE-CROSS-EXAMINATION BY MR. ANDERSON.

Q. Mr. Jones, do you know what was contained in what was known as the Atoka agreement of 1897? A. I have heard a good deal about it and read a good deal about it, but I can't go into the details of that agreement.

Mr. Ballinger: Suppose you show it to the witness.

Mr. Anderson:

Q. Have you any recollection of it? A. No, I have not.

Q. Now, Senator Owen stated in his petition and afterwards in his testimony that the provision relating to the full bloods was inserted in the act of July 1, 1902, at the instance

of attorneys for the Choctaw Nation. Do you know anything about that? A. I am under the impression that it was.

Q. And he also has stated that the same provision was contained in the Atoka agreement and was afterwards, through his influence, enacted into law? A. I don't know anything about that.

MR. RICHARDSON:

Q. In your answer to Mr. Anderson's question just now you stated, as I understood you, that the provision for the recognition of the full bloods in the act of 1902 was inserted at the instance of the attorneys for the Choctaw Nation. Is that correct? A. Oh, no; for the Mississippi Choctaws. I don't recall that any of the attorneys for the Choctaw Nation did that.

MR. BALLINGER:

Q. Then when you stated that it was inserted at the instance of the Choctaw Nation or its attorneys you meant the attorneys for the Mississippi Choctaws? A. Yes, sir; that is what I meant. I don't know anything about the action of the attorneys for the Choctaw Nation.

The deposition of GEORGE A. WARD, for intervening claimant, W. S. Field, taken at Washington, D. C., the 23rd day of September, 1910.

Claimant's counsel, WEBSTER BALLINGER.

W. W. WRIGHT, for Howe Estate.

W. E. RICHARDSON, for Arnold.

Q. Mr. Ward, what official position, if any, did you hold in the year 1900? A. I was clerk in the Indian Office.

Q. What was your official designation? A. At that time I was simply clerk.

Q. In what division? A. In the Land Division.

Q. Were you at that time law clerk? A. No, I became law clerk later.

Q. When did you become law clerk? A. I think it was in 1904, either 1904 or 1905. There was never such a thing in the Indian Office as law clerk until I was appointed.

Q. In your capacity of clerk in the Indian Office did you pass upon contracts submitted to the office, contracts with Indian tribes or Indians, submitted to the office for ap-

proval? A. Only with reference to the Five Civilized Tribes.

Q. Did you consider and make recommendations in cases of contracts pertaining to the Five Civilized Tribes? A. Yes, sir.

Q. Did all contracts coming into the office pertaining to the Five Civilized Tribes or any members thereof pass through your hands? A. As far as I know they did.

Q. Do you recall any contracts having been submitted to the office for approval which was made with any bands of Mississippi Choctaws residing in Mississippi? A. I recall a contract that was made with alleged bands of Mississippi Choctaws residing in Mississippi.

Q. Will you state with whom the contract purported to have submitted that contract? A. Personally I do not know.

Q. Will you state with whom the contract purported to have been made? A. It was either in the name of Lindly—I think his initials are M. M.—or in the firm name, which was Harley & Lindly, or Harding & Lindly. I have forgotten the name of Lindly's partner.

Q. Do you recall whether the contract in question was regular in all respects? A. It was prepared in accordance with the requirements of Section 2103, I think it is, of the Revised Statutes, properly acknowledged and everything of that sort.

Q. Do you recall what action, if any, was taken upon that contract by the office? A. As I now recall, there was no what we term formal action taken. It was all informal, with the Commissioner, Mr. Jones.

Q. Was the matter considered? A. Yes.

Q. State, if you will, briefly, what consideration was given and who were present at any time the matter was up for consideration by the Commissioner. Just state what you recall of what occurred in connection with the contract? A. The contract was filed, as I now recollect, before I went into the Indian Office. I went there, I think, May 16, 1899. It never reached the Files Division; never was given a number. At that time all mail went to the Commissioner before it went to the Files Division, and he only sent that to the Files Division that he desired to. I went to the Indian Territory on December 16, I think it was, 1899, and it was either

just before I went or just after I got back that Commissioner Jones called me into consultation about the contract, with reference to the action which should be taken and everything of that sort. My recollection is that the first time he called me in nobody was present but the Commissioner and myself. The second time Chester Howe was present, and I think Walter Field was present, and then the whole thing was threshed out, and the Commissioner decided he would take no formal action on it and returned the contract, or the conclusion was that he would return the contract. I don't know what became of the contract. I don't know that he did return the contract.

Q. Will you please state the reason that action on the contract by the office was withheld? A. There was a difference of opinion in the office between another gentleman and myself as to what action should be taken on the contract. It was my opinion that we had nothing whatever to do with the Mississippi Choctaws; that we had no jurisdiction of those who remained in Mississippi under the Treaty of 1830, and so far as making contracts was concerned we had no authority, and we never recognized the Indians in Mississippi as a tribe or as a band and should not approve the contract.

Q. Your advice, then, was that the Department had no jurisdiction over the Indians, either individually or as bands, residing in Mississippi? A. Absolutely. They were citizens of the State under the treaty.

Q. And, further, that any contract entered into with them, either as bands or as individuals, were matters strictly with them? A. Absolutely.

Q. That view was sustained by the Commissioner, was it not? A. Yes, sir.

Q. Was any suggestion made at any conference held before the Commissioner with reference to the taking of individual contracts? A. Yes, sir.

Q. Please state what it was? A. I made it myself. I told Chester Howe that we had no jurisdiction and "Why don't you go and make individual contracts?"

Q. Do you recall whether Walter Field called at your office repeatedly thereafter, either personally or with Chester Howe, urging action upon Mississippi Choctaw cases? A. Oh, yes. They were in there annoying us practically every day, both of them.

Q. And they called with reference to the class of cases known as Mississippi Choctaw cases? A. Yes, sir.

Q. Was it understood at the office that they were acting jointly? A. That was the way we understood it. In other words, if Mr. Field would come in and inquire about business of Mr. Howe we would give him information, and if Mr. Howe came in and inquired about Field's business we gave him information.

Q. At the time the band contract was up for consideration by the Commissioner was it understood that Walter Field had an interest in that contract?

By Mr. Richardson:

I object to the question as calling for the understanding of the witness, which would necessarily be based on facts, to which facts he should testify instead of his understanding.

A. I don't recollect about Mr. Field, but Howe was mentioned in the contract in some way. I don't think he was a party to it, but he either had an assignment or something. Howe was mentioned in it. I don't remember whether Mr. Field was or not.

Q. Was there submitted at that time, or was there offered for the opinion of the office, any assignment or separate contract in which the names of either Chester Howe or Chester Howe and M. M. Lindly or Walter Field appeared? A. As I said, I don't recollect about Mr. Field, but Howe was mentioned in some way with the contract, in all probability as an assignee. I don't think his name was mentioned in the body of the contract, but he was connected with it in some way.

Q. That is, you mean to state that Chester Howe's name did not appear in the band contract, but appeared in some other paper? A. That is the way it was.

Q. Mr. Ward, I ask you whether at any time any contract was presented by Chester Howe or by any other person representing J. E. Arnold, purporting to be a contract with Mississippi Choctaws or bands of Mississippi Choctaws for approval of the Department?

By Mr. Richardson:

I note an objection to that question upon the ground that the proof called for should properly be of record, or it should be shown that the records are deficient on that point before verbal testimony can be considered by the court.

A. My recollection is that no such contracts were presented by anybody.

Q. Mr. Ward, I hand you a paper which is entitled "Power of Attorney and Contract" (handing witness Exhibit James E. Arnold B-8), and purporting to have been signed by 17 persons, each signature being by mark, and I ask you whether such a paper was ever during your official connection with the Indian Office brought to your attention? A. Not to my recollection. I think that later, say along about 1905 or 1906, there was a power of attorney submitted to the office, or a copy of the power of attorney, by the Dawes Commission from this Billy Jack, Isaac Johnson and Big John in connection with the disbarment proceedings against Mr. Arnold.

Q. If such a paper as that had been presented to the office would it have received consideration? A. It would have been just turned down because it was not in proper form. That is, one just like this one would not be in proper form to receive consideration. It is not acknowledged or anything of that sort.

CROSS-EXAMINATION BY MR. RICHARDSON.

Q. Your criticism of the form of this contract does not relate to the body of the contract, but to the character of the certificates that should be attached showing approval before a United States Judge? A. That is right, and, in addition to that, it is not in the form prescribed by law; that is, the body of the contract is not.

Q. In what particular does that contract not comply with Section 2103 of the Revised Statutes as far as the body of the contract is concerned? A. In the first place, if you make a contract with an Indian tribe you have to get authority from the Commissioner of Indian Affairs to go on the reservation. Then the Indians are called in council, they pass a resolution appointing a business committee and authorize that committee to enter into a contract, sometimes naming the person with whom the contract is to be made. Everything of that kind is attached to and becomes a part of the contract.

Q. Were those conditions complied with in reference to the Lindly contract to which you have testified? A. No, sir; because we had no jurisdiction.

Q. Does not this contract purport to be with the same Indians? A. It purports to be with the same Indians, but,

if I understood you correctly, you asked me why this did not comply with the statute. I wish to be understood, first, that it was my opinion and the opinion of the Indian Office that we had no jurisdiction over the Mississippi Choctaws and could not approve contracts with them.

Q. The purpose of my question was to ascertain what distinction, if any, existed between this contract and the other contract to which you testified. Then, as I understand you to say, that same objection existed to the Lindly contract? A. No. The Lindly contract, as I remember, was properly acknowledged and complied with the statute, but the other formalities, about getting authority from the Commissioner of Indian Affairs, were not complied with, and did not have to be, nor did it have to be in this case, and, as I recollect, the Lindly contract was made with two or three alleged bands and after they had met in council and authorized a committee to enter into the contract.

Q. Was this Lindly contract in typewritten form or in script? A. It was typewritten.

Q. Do you recall before what United States Judge it was acknowledged? A. Oh, no. It was acknowledged some place down there in the South, in Mississippi, I think.

Q. Was it filed in the office with the letter accompanying? A. Yes. My recollection is that it was, and that the letter, a little letter, was signed by Chester Howe.

Q. I believe you stated this contract was filed before you went into the office in May, 1899? A. Yes.

Q. Do you know what record was made of the receipt of communications at that time? A. The mail went to the Commissioner of Indian Affairs. It was opened in his room and put on his desk, and, of course, he was supposed to read it all before it went to the files. He sent such of it to the files as he saw fit and retained such on his desk as he saw fit.

Q. Was there any official record kept in the office showing the receipt of letters unless they went to the Files Division? A. No, sir; there was not.

Q. Was there any acknowledgment made of such letters by mail? Was there any systematic routine with respect to the treatment of such communications which did not go to the Files Division? A. I don't know. We would never see them unless they came in for discussion.

Q. I believe you testified that there was a difference of opinion in the office between yourself and another gentleman as to the right to approve this alleged Lindly contract with the Mississippi Choctaws? A. I did.

Q. Who was the gentleman referred to? A. W. C. Van Hoy. He lives in Bartlesville, Oklahoma.

Q. In a question asked you on direct examination you were asked to state whether the reason for the non-approval of this alleged Lindly contract was the fact that the Indians did not constitute a band or tribe within the meaning of the statute, and that it related to matters, quoting from the question, "matters strictly with them." What did you understand counsel to mean by the term that it related to "matters strictly with them?" A. I understood it to mean that they were citizens of the State and of the United States, and beyond our jurisdiction, and they had the same right to contract as a white person.

Q. Did you prepare any memorandum on this question submitted to the office, or any minute of authorities or brief? A. I did. I think I prepared it for Major Larrabee, who was then Chief of the Land Division.

Q. Did you make any objection to the approval of the contract upon the ground that their claim was not a claim against the United States, but was a claim against other Choctaw Indians? A. I objected to it on the ground, first, that they were citizens and we had no jurisdiction; second, that if they had any rights in the Indian Territory they were under the Treaty of 1830, and they had to comply with that treaty; and, third, that it was not a claim against the United States, but a claim against the Choctaw Nation for a property right within a Choctaw estate.

Q. You stated that Messrs. Howe and Field appeared before you almost daily in connection with Mississippi Choctaw matters. Did they come together or separately? A. Sometimes they would be together and sometimes they would be separate, and sometimes Howe's girl would come over and inquire about it; Howe's stenographer.

Q. What was the subject of these frequent calls? Was it the general Mississippi Choctaw claim to a right in the Choctaw lands and funds or to the right of individual Mississippi Choctaws to enrollment on the Cherokee rolls? A. Both.

Q. Over what period did these visits extend? A. From May 16, 1899, to March 4, 1907. I think it was May 16.

Q. Are you familiar with what were known as 14th Article cases? A. Absolutely.

Q. Did these interviews with you relate to any large degree of those cases? A. Principally to those, to the rights of what we called the 14th Article people.

Q. When claims of these 14th Article people came before your office they were treated as separate cases and docketed in the name of the head of the family? A. Yes, sir; that is, in the name of the principal applicant; sometimes it would not be the head of the family.

Q. When attorneys looked into those cases or represented those cases did your office require them to enter an appearance? A. No, sir.

Q. Do you recall whether Mr. Chester Howe was interested in any particular cases which you could name now? A. I could not without going to the records; there are so many of them.

Q. Can you state in a general way how many individuals were affected by these 14th Article decisions? A. I think there were something like 4,000.

Q. Do you know about how many of these 4,000 were actually put on the rolls under the 14th Article? A. I can't say definitely. I would have to go to the record and count them.

Q. Do you know whether any of these conferences with Mr. Howe related to objections which were made to the approval by the office of the request of the Dawes Commission made in November, 1900, to withdraw the McKennon roll of March 10, 1899? A. My recollection is that the conference did not relate to that, but that I discussed the matter of withdrawing the roll with Mr. Howe and with other attorneys, and finally reached the conclusion not to let them withdraw it. The roll was in duplicate and the Dawes Commission wanted to withdraw both copies, as we understood it, to get it out of the way, and we refused to do it. I discussed it with Mr. Howe and other attorneys, and got all the advice on the subject I could get.

Q. Do you know whether any of these conferences with Mr. Howe related to the action to be taken by your office on the Choctaw and Chickasaw supplemental agreement submitted by the Dawes Commission in the latter part of 1900,

which was never approved by the Interior Department? A. No, I can't say as to that.

Q. Do you recall whether any of these conferences related to the action to be taken by the Department on the unratified Choctaw and Chickasaw supplemental agreement of February 7, 1901? A. We never discussed with any person other than a Government official the action that was to be taken by our office on any agreement.

Q. Did the office put itself on record as having adopted this position by actually refusing to discuss this agreement with attorneys? A. In the first place, an attorney would have more propriety about him than to attempt to discuss a matter of that sort that was then before the Department and was to be submitted to Congress, and if he did he would be called down on short order.

Q. Is it not a fact that the attorneys representing these two nations did discuss these matters with the Department? A. Yes. They were regarded as being officers of the Department.

Q. This contract with Lindly, as you recall, was made with either Mr. Lindly or his firm? A. Lindly or his firm. The firm was either Harley and Lindly or Harding and Lindly.

Q. About what date was that contract? A. I don't recollect now. It was filed long before I had anything to do with the Indian Office. I don't mean filed there; presented to the Commissioner, because it was never filed.

Q. Do you recall the year in which it was executed? A. No, I do not.

Q. Was the contract witnessed as well as acknowledged before these officers? A. It was, as I remember, regular in form and complied with the statute.

Q. About how many signatures did the contract have as far as representatives of the Indians were concerned? A. I think there were about six. I think there were three alleged bands and six signatures, possibly nine.

Q. Did these bands have any distinctive names? A. They had names that they gave themselves, but I don't remember them now. They were names that they adopted.

Q. Do you recall whether these purported to be signed by representatives selected for that particular purpose or by the regular chiefs of the bands? A. My recollection is that they were signed by representatives selected for that purpose.

Q. About how many pages of typewriting did this contract consist of? A. About three, the contract itself, and then the usual certificates.

Q. Was it paper just fastened together or did it have a regular cover? A. As I recollect, it had a cover.

Q. Do you know whether there were any particular endorsements on that cover? A. I think not.

CROSS-EXAMINATION BY MR. WRIGHT.

Q. In your direct testimony when you spoke of Mr. Howe's name appearing in the individual cases you referred to the powers of attorney that were filed with those cases, did you not? A. Not necessarily. Often power of attorney was not required. We recognized any reputable attorney who was admitted to practice before the Department, and did not require him to file an authority in citzenshp cases. All told, I do not suppose there were in the 280,000 cases 100 powers of attorney filed.

Q. It was customary for the attorneys to file a letter of appearance, was it not, in each case? A. Sometimes they did and sometimes they did not. If an attorney came in and said, "I am attorney for A. B." and we knew him, we took it for granted he was telling the truth and let him see the record.

Q. And if later on he presented any arguments or took any formal action as attorney, it would appear by reason of his correspondence in the case? A. Yes.

Q. Do you recall at one time that there was some complaint made by attorneys for certain applicants because the Dawes Commission failed or refused to make a record of the individual cases of the Mississippi Choctaws? A. When do you mean?

Q. I mean at any time while they were passing on those cases? A. My recollection is that there was complaint made, either when McKennon was in Mississippi in 1899—I think it was—or subsequently, when they were down there enrolling the Mississippi Choctaws.

Q. Do you recollect whether the Dawes Commission was subsequently advised or instructed by the Secretary's office to make a record of those applications so that there might be something to consider on appeal or when the matter came

to the Department? A. The Commission was repeatedly instructed to make a record in every case, no matter whether it was that of a full blood, mixed blood or freedman.

Q. Is it not a fact that this matter was brought to the attention of the Secretary's office by Mr. Howe in some of the cases in which he appeared? A. I can't say; I was not in the Secretary's office; I was in the Indian Office.

Q. Do you recollect whether this question was brought to the attention of the Indian Office by Mr. Howe in any of his cases? A. No, I can't say as to that.

Q. You made some reference in your direct testimony to the disbarment of Mr. Arnold. In what way did that affect Mr. Arnold in so far as his right to examine records of the Indian Office was concerned? A. After that he was not allowed to examine any records, to see any records. That is, after he was suspended and subsequently disbarred. And his communications relating to any matters, if any were received, would simply be acknowledged and no information given.

Q. Then, according to the practice of the Indian Office, when a person is disbarred he is absolutely denied any information regarding the records and is not allowed to obtain any information as to any specific cases? A. That was the practice when I was there.

Q. Was that the practice also in cases of suspension? A. Yes.

Q. I understand from your direct examination that when these treaties had been negotiated by the Commission to the Five Civilized Tribes and the official representatives of the Indians, and were being considered by the Secretary of the Interior, the attorneys for the Choctaw and Chickasaw Nations, or the attorneys of the attorneys for the nations, were present at conferences. Is that correct? A. It is. The attorneys for the different nations were called in and consulted about each and every agreement that was made with them.

Q. Then the only opportunity for other attorneys practicing before the Department was after the agreement had been submitted to Congress? A. It was after it was introduced as a bill. Then they were at perfect liberty to come to the office and discuss any of its provisions with any of the employes who were on that work.

Q. While you were employed in the Indian Office at any time did you go before any of the committees of Congress in your official capacity? A. Yes, many times, but not in connection with any agreements.

Q. Did you appear before any of the committees of congress in the matter of the supplemental agreement approved July 1st, 1902? A. No, sir.

Q. Did you appear before any committees of Congress while it had under consideration a certain agreement with the Choctaw and Chickasaw Nations introduced in the House of Representatives as a bill described H. R. 14,310, February 28, 1900? A. I did not appear before any committee of Congress in connection with any agreement with either of the tribes.

CROSS-EXAMINATION BY MRS. LOCKWOOD.

Q. I understand you to be talking about a contract that has been lost? A. I don't know what you understand me to be talking about.

Q. You are talking about an alleged contract that has been lost? A. I do not so testify. I know nothing about that.

Q. You are testifying about a contract? A. Yes.

Q. Who was that contract between? A. Between some Indians in Mississippi known as Mississippi Choctaws and either Lindly or Harley or Harding and Lindly. It was either in Lindly's name or in the firm's name. His partner was either Harley or Harding, I am not sure which.

Q. It was between the Mississippi Choctaws and this firm? A. Yes, this firm or Lindly, a member of the firm.

Q. Now, what do you understand about who are Mississippi Choctaws? A. The Indians who remained in the State of Mississippi and became citizens of the State under Article 14 of the Treaty of 1830.

Q. Were all those who remained under Article 14 of the Treaty of 1830 included in this contract? A. I can't tell as to that.

Q. What Mississippi Choctaws are there or what class of Choctaws not included in this contract? A. I could not tell as to that.

Q. These three bands which were included in this contract, you don't know the names of the bands? A. We never recognized them as bands or otherwise.

Q. You did not recognize them in any way? A. In no way.

Q. About how many of them were there, I mean what you call Mississippi Choctaws, included in this contract? A. I don't know how many were included in this contract.

Q. In the three bands? A. I don't know anything as to the number. I think that there were, all told, about 4,000 claimants, something like 4,000, for rights as Mississippi Choctaws.

Q. Where were these three bands located geographically, so far as you know? A. Down in Mississippi. The Mississippi Choctaws principally lived in Leake County and in some other counties down around Meridian.

Q. You just know Leake County?

CROSS-EXAMINATION RESUMED BY MR. WRIGHT.

Q. Mr. Ward, you have stated in your examination that the only Mississippi Choctaws were those residing in Mississippi who were beneficiaries under Article 14 of the Treaty of 1830? A. They were the only ones authorized to be enrolled, or those who had complied with the Act, I think, of August 12, 1843.

Q. Is it a fact that the basis of your conclusion or statement is the fact that they were the only class who had been officially recognized by Congress under the statutes? Is there any reason that you know of, except the lack of Congressional recognition, that would prevent the 19th Article Mississippi Choctaws from being considered in the class of Mississippi Choctaws? A. Not as we understood the Mississippi Choctaws. The 19th Article people were not given any rights under the treaty if they removed to the Indian Territory, while the 14th Article Choctaws were given rights, provided that those who stayed under the 14th Article should not lose their right of citizenship if they ever removed. The 19th Article people became citizens of the State of Mississippi, and they did not have any right under the treaty to

go to the Indian Territory and claim rights in the property. Of course Congress could pass a law, if it saw fit, giving those people rights and modifying the treaty.

CROSS-EXAMINATION RESUMED BY MRS. LOCKWOOD.

Q. I want to know if any of these Choctaws, so far as you know, were located on or near the Gulf of Mexico? A. Not so far as I know. My understanding is that they were strung around through Louisiana, Mississippi and that section of the country.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. You were asked on cross-examination by Mr. Richardson whether there was any difference between the contract, or the paper which purports to be a contract and which purports to have been entered into between certain persons, all of whom sign their names by marks, with J. E. Arnold, and the contracts submitted informally to Commissioner Jones and which purported to be signed by the representatives of two or three bands of Mississippi Choctaws entered into with M. M. Lindly or Harley and Lindly. I hand you the paper which purports to be a contract with J. E. Arnold (handing witness Exhibit J. E. Arnold B-8), and ask you whether that paper contains any definite time, as required by Section 2103 of the Revised Statutes of the United States, in which it should run?

By Mr. Richardson:

Objected to on the ground that the agreement referred to speaks for itself and it is the duty of the court to determine whether it complies with the law.

A. I read it over a while ago, and my recollection is that it does not.

Q. I ask you whether that paper purports to have been made in duplicate?

By Mr. Richardson:

Same objection.

A. No, it does not seem to.

Q. I ask you whether that paper purports to have been executed before a judge of a court of record?

By Mr. Richardson:

Same objection.

A. No, it does not.

Q. I ask you whether that paper purports to contain the names of all the parties in interest, their residence, occupation, and whether it is a tribal agreement or an individual agreement, and the scope of the authority of the person signing it?

By Mr. Richardson:

Same objection.

A. It purports to be on behalf of the parties signing it and all the Choctaws living in Mississippi and Louisiana.

Q. Does it state their residence and occupation?

By Mr. Richardson:

Same objection.

A. It does not.

Q. Does it state the authority by which they executed the instrument?

Same objection by Mr. Richardson.

A. No, sir.

Q. Does it state the time when and the place where it was entered into?

Same objection by Mr. Richardson.

A. It states the time, which is the 26th of June, 1897, but it does not seem to give the place.

Q. I ask you now whether that contract in any respect conforms to the requirement of Section 2103 of the Revised Statutes of the United States?

Same objection by Mr. Richardson.

A. In my judgment it does not.

Q. I ask you now whether you are clear in your memory that the contract submitted which purports to be in the name of M. M. Lindly or Harley and Lindly conformed with all the requirements of Section 2103 of the Revised Statutes? A. My recollection is that it complied absolutely with all the requirements of that law.

Q. What are known as the Mississippi Choctaws are not reservation Indians, are they? A. No, sir; that is, those who still remained in Mississippi. Of course, those who have moved to the Indian Territory are now on what we call an Indian reservation.

Q. So that, as far as the Indians in Mississippi were concerned, there was no authority in your office to issue a permit to Mr. Lindly or his associates to go among the Indians and make the contracts? A. We would not have issued a permit to anyone?

Q. Why not? A. Because we did not have any jurisdiction over them.

Q. Did they have an agent? A. No, sir. That is, they had no Government agent.

Q. Was there any person to whom a permit could have issued? A. No, sir.

Q. I ask you what the custom of Commissioner Jones was with reference to retaining on his official desk papers of this nature and submitted informally to the office? A. Usually he would retain such papers and also others that came in in regular way, and then he would call in the person who was going to handle it and discuss it with him and find out what action ought to be taken, what action he could legally take and tell that person to go ahead, and then the paper would come in the regular way to the files.

Q. If the paper was such a paper as the office would not act upon officially, then what was the custom? A. So far as my part of the work was concerned, if it had not gone to the files I would advise him to let the person who filed it withdraw it informally with no record of it. If it had gone to the files there would have to be an application to withdraw it.

Q. You stated, as I recall, on your cross-examination, that what are known as Mississippi Choctaws were those Indians remaining in Mississippi. Were they confined to the State of Mississippi? A. Oh, no. Down through the South generally, in Mississippi, Louisiana, and I think some in Alabama; principally in Mississippi, as I understand.

Q. You were asked on your cross-examination with reference to certain visits made by Mr. Howe or Mr. Howe and Mr. Field to the office with reference to legislation. I ask you whether you recall any such visits, and, if so, the object of Mr. Howe and Mr. Field? A. It was to secure legislation that authorized or allowed the enrollment of many people down in Mississippi. For instance, at one time—I don't believe Field visited the office in connection with this, but

Mr. Howe did and others—they wanted, as I recollect, the fathers, grandfathers, sisters-in-law, brothers-in-law and so on enrolled as Mississippi Choctaws. Mr. Howe and others undertook to get such an amendment in either the supplemental agreement of July 1, 1902, or in an Indian appropriation act. We sat down on the proposition like a thousand bricks.

Q. Under the Act of June 10, 1896, did you receive complaints from any attorneys because of the alleged refusal of the Dawes Commission to receive and consider applications of non-resident Mississippi Choctaws? A. Many. The complaints came in later, in 1900, 1902 and along there.

Q. Do you recall the leading decision or ruling of your office on that question, in what case the ruling was made? A. You mean about applications?

Q. Requiring record to be made of them? A. No, I don't recall. There were so many of them.

Q. Did the Commission assume the same position under the Act of 1898 at first? A. It did.

Q. Did your office make any rulings under that act relative thereto? A. Relative to what?

Q. Relative to the receipt by the Commission and the making of the record thereof of the applications of the non-resident Mississippi Choctaws? A. Yes, as to them and all others. I remember distinctly that we held that a postal card was an application. There was a girl in California who made an application by postal card. The Commission turned her down and she appealed to the Indian Office, and we held that it was an application, and that they were in duty bound to take her testimony.

Q. To refresh your recollection, I ask you if you recall the Denby Wingfield case? A. No, I do not.

Q. Do you recall any visits to your office by Mr. Howe or Mr. Howe and Mr. Field relative to a reversal of the ruling of the Commission denying them making any record thereof of the applications of the Mississippi Choctaws? A. Yes and of many other persons.

Q. And it was as a result of the complaints made by Mr. Field, Mr. Howe and other attorneys that your office directed the Commission to receive and make a record of these applications? A. Yes, sir; and also that of applicants themselves; that is, the complaints of applicants themselves.

RE-CROSS-EXAMINATION BY MR. RICHARDSON.

Q. You examined the contract which is a part of Exhibit Arnold B-8 in your re-direct examination. I will ask you whether, in your opinion, that contract was a valid contract with those Indians? A. In my judgment that contract was valid so far as the parties who signed it were concerned, provided they were Mississippi Choctaws?

Q. It was not, under your construction of the law, Section 2102, which construction was confirmed by your superior, the Commissioner of Indian Affairs, necessary for a contract with the Mississippi Choctaw Indians to be executed with the formalities required by Section 2103 or to be approved by the Indian Office? A. It was my advice to the Commissioner, which he accepted, that we had no jurisdiction over those Indians down there in making contracts, and it was none of our business whether they complied with the statute or they did not, and that we had no authority either to approve or disapprove them.

Q. And that was based upon the fact that those Indians were by your decision of that time not tribal Indians, but citizens of the State of Mississippi? A. That is right.

Q. In the cases before the Indian Office you have two classes of powers of attorney and contracts, one class which required approval under Section 2103, and the other class where an attorney, to be entitled to recognition as an agent of an Indian who is not in tribal relations, does not have to have his contract approved? A. With reservation Indians outside of the Indian Territory the contracts with attorneys must be made in accordance with Section 2103. In the Indian Territory, with the different nations down there, contracts are made under tribal acts approved by the President, and it takes them out of the statute. So far as my work was concerned, we did not require powers of attorney in citizenship cases. Any attorney that came in and who had been admitted to practice and said he represented any applicant, we allowed him to see the record.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. You have stated, as I recall, that contracts with the Five Civilized Tribes were first initiated by the action of the

tribal councils and then approved by the Secretary of the Interior and then by the President? A. That is right.

Q. Such was the law at the time these contracts were entered into? A. No. That commenced in 1899. The first contracts made under tribal contracts were the McMurray, Mansfield and Cornish contracts.

Q. Neither the Arnold contract nor the Lindly contract came within the provisions of Section 2103 of the Revised Statutes of the United States? A. Not in my judgment.

Q. And so held by your office? A. Only as to the Lindly contract. The Arnold contract, I don't remember of it ever having been filed or presented.

RE-CROSS-EXAMINATION BY MR. RICHARDSON.

Q. Did Senator Owen call upon you with reference to this matter, these Mississippi Choctaw cases? A. Oh, yes. He was one of the persons that tried to get that law through about enrolling the grandfathers, grandmothers and fathers-in-law.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. Do you recall the amount of the percentage to be paid in the contract submitted by Mr. Howe or Howe and Field for Lindly? A. I don't know who submitted the contract, but the percentage in the contract, as I recollect, was 25 per cent or a sum of money—I think that was the way it read—equal to 25 per cent of the value of the allotment.

Q. What view did the Department take as to the reasonableness of that percentage? A. The Commissioner of Indian Affairs at first objected, but I told him that under all the circumstances it was a reasonable fee and he agreed with me afterwards.

Q. Was there at that time a tacit understanding that the individual contracts suggested at that time were to be taken upon a similar basis and that they would not meet with opposition from the Department? A. So far as the Indian Office was concerned. This contract, so far as I know, never went to the Department.

Q. You are familiar with the allowance of fees by the Department for the purpose of enrolling Indians? A. Yes, sir.

Q. Can you state the percentage or percentages ordinarily allowed for such services as were rendered by attorneys in citizenship cases in the Five Civilized Tribes? A. The Commissioner of Indian Affairs, Mr. Leupp, agreed to allow attorneys, I think it was, 20 per cent for securing the enrollment of persons whose names had been stricken off the roll after the roll had been approved.

Q. In that case there was no legislation required, was there? When suit was prosecuted to the United States Supreme Court that determined a large number cases, did it not? A. Yes.

Q. And the allowance of 20 per cent was in each case affected by that decision? A. Yes.

Q. Can you state the customary allowance in other enrollment cases of similar nature? A. We had nothing to do with them.

Q. Mr. Ward, you are familiar with the services rendered by Chester Howe, Walter Field and other attorneys in the Mississippi Choctaw cases, are you not? A. Yes, sir.

Q. Assuming that their services commenced in 1896 and continued until the close of the rolls in 1907, in both the procurement of legislation and the prosecution of the cases before the Department, what would you consider a reasonable fee? A. I would consider 25 per cent a very reasonable fee.

RE-CROSS-EXAMINATION BY MR. WRIGHT.

Q. After the decision of the Goldsby mandamus suit, in which and in similar cases the Commissioner of Indian Affairs had held that 20 per cent was reasonable, is it not a fact that all other similar cases were acted on favorably by the Secretary whenever it was shown to him that such persons were squarely within the Goldsby decision? A. That is my understanding, that their names were restored to the roll; rather, that the lines eliminating the name were removed.

In answer to general questions witness states that he knows nothing further relative to the claim in question.

GEO. A. WARD.

FRANCIS L. NEUBECK, Commissioner.

Honorable Solicitor General of the United States.

SIR:

Please take notice that on Monday, December , 1918, at the convening of the Court, or as soon thereafter as the business of the Court will permit, I shall present the above motion to the Supreme Court of the United States, and ask the Court to consider the same.

Very respectfully,

Attorney for Appellants.

I hereby acknowledge service of a copy of the above motion, affidavit and brief, this day of November, 1918.

.....

Solicitor General of the United States.

SUPPLEMENTAL BRIEF

INDEX.

AUTHORITIES.

Supreme Court of the United States.

Nos. 124, 125, 126, 127, 128 and 129.

OCTOBER TERM, 1918.

J. S. BOUNDS, Attorney in Fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and KATIE A. HOWE, Executrix of the Estate of Chester Howe, Deceased, *Appellants*,

vs.

JACK AMOS AND OTHERS, Known as the Mississippi Choctaws.

Brief for Appellants on Appellees' Motion to Dismiss or Affirm

AND

Supplemental Brief for Appellants on the Merits.

STATEMENT.

About November 20th, 1918, these Appellants filed in the Clerk's Office of the Supreme Court a motion to remand the cases to the Court of Claims for additional Findings of Fact, and supported the same by an affidavit and brief. The Solicitor-General was duly served with a copy of the motion

and brief, and the Clerk of the Court, through one of his assistants, and the Solicitor-General, through one of his assistants, were notified by the attorney for the Appellants that the brief in support of the motion to remand was intended and would be used as the Appellants' brief on the merits if the cases were reached for argument before action on the motion to remand had been taken.

In explanation of the delay in filing the motion to remand, it may be proper to state that Walter S. Field, one of the principal Appellants, and the one best posted as to the whole case, was called to England on business directly growing out of the war about a year and a half ago, expecting, at the time, to be gone only a few weeks, but unexpected delays, over which he had no control, have detained him there until the present time. The motion was not sooner made because the attorney for the Appellants had reason to hope and expect to be able to consult with him before filing the motion.

APPELLEES' MOTION TO DISMISS OR AFFIRM IS WITHOUT MERIT.

Jurisdiction.

The question of the jurisdiction of the Court of Claims was directly raised by the Appellees before the Court of Claims in a motion to dismiss filed February 17, 1912, argued May 20, 1912, and overruled December 2, 1912. (Record, p. 93.)

To determine this question it would be necessary for this Court to examine and construe the Acts of Reference, and to consider all the facts as found by the Court, as well as the claims of Appellants that material facts were entirely omitted from the Findings.

LIABILITY OF THE MISSISSIPPI CHOCTAWS AS A CLASS.

The Court of Claims has directly held that the only liability possible under the Acts of Reference is liability of the Mississippi Choctaws as a *class*, while the Appellants earnestly contend that there may be *individual* liability as well as liability as a *class*. These are questions that are to be settled by this Court, and require a full examination and consideration of the Acts of Reference and the Facts found and those which should have been found.

The Solicitor-General has cited no case where this Court has disposed of questions of this character by the summary proceeding of a motion to dismiss or affirm, and we confidently submit that no such case can be found, and that the rules of this Court do not provide for any such procedure in cases of this kind.

If, however, the Court should be in doubt on this point, we ask the attention of the Court to the Appellants' brief filed in support of their motion to remand, particularly to pages 22 to 35 and 48 to 50.

The case of Green vs. Menominee Tribe of Indians, 233 U. S. 558, cited by the Appellees in their brief on the merits in No. 123, page 28, certainly has no bearing on this case. That case decided that the Menominee *Tribe* of Indians cannot be held bound by a promise to pay the debt of an individual Indian for his individual supplies, unless the promise to pay is shown to have been in writing. This Court further holding that the Act of Reference in that case "conferred no jurisdiction upon the Court below *over claims against an Indian as a mere individual aside from his membership of the tribe.*"

In this case all the service rendered were distinctly and directly *in respect to the membership of the Indians in the tribe*, and were necessary to establish the Indains' "*citizenship in the Choctaw Nation.*"

The Mississippi Choctaws are still in tribal relation, and Congress still has full control of their tribal lands and funds.

Congress could unquestionably have directly appropriated money out of the Mississippi Choctaw funds to pay for the services rendered by the claimants to the Mississippi Choctaw Indians in establishing their right to citizenship in the Choctaw Nation.

See authorities cited on page 50 of Appellants' brief on motion to remand.

As Congress had the unquestionable right to determine the value of these services and make an appropriation out of the Indians' funds to pay for these services, it was clearly within the authority of Congress to direct the Court of Claims to determine the value of the services and enter the judgment accordingly, and that is just what Congress has done by the Acts of Reference in this case.

No. 124.

Claim of J. S. Bounds, Attorney in Fact for T. A. Bounds.

The petition in this case will be found on pages 51 to 61 of the Record.

The allegations of the petition, all of which were supported by proof, have in general terms been sustained by the Findings of the Court (Finding XXXVI, Record, p. 121). The allegations, in brief, are as follows:

That T. A. Bounds entered into contracts with a large number of individual Mississippi Choctaws, whose names are given, to assist them in securing their identification and enrollment in the Choctaw Nation. That in compliance with

his contract the said Bounds did assist in the identification of these Indians; assisted them to remove to Indian Territory; secured them locations in the Choctaw Nation, and helped maintain them there while their rights were maturing. That these Indians, naming them, were actually enrolled and allotted as Mississippi Choctaws. That the said Bounds expended about $20,000 in this work, and devoted a large amount of time and labor for which he asks compensation.

As above set forth, the Court of Claims has in general terms found all the substantial facts as claimed by this Appellant, but the Court dismissed the petition on the ground that claims for service to individual Indains could not be maintained under the jurisdictional Acts.

It will be noted that Bounds' name is directly mentioned in the Act of Reference of May 29, 1908 (Record, p. 96), and it must be presumed that Congress knew the nature of his claim and the character of the services rendered by him. Congress undoubtedly had the power to refer this claim to the Court of Claims, and in express terms did so refer it.

It will be observed that under the provisions of the Act of July 1, 1902 (Record, p. 114), which established the rights of the Mississippi Choctaws, in order for any Indian to perfect his right to citizenship in the Choctaw Nation a number of things were necessary:

1st. He had to be identified as a Mississippi Choctaw.

2nd. He had to make a *bona fide* settlement within the Choctaw-Chickasaw County, *within six months after the date of his identification.*

3rd. He had to make proof of such settlement within one year after the date of said identification.

4th. He had to reside continuously for the period of three years upon the lands of the Choctaw and Chickasaw

Nations, and make proof of such *bona fide* residence within four years after his enrollment.

It was not until the final proof of settlement and continuous residence was made that the right of any Mississippi Choctaw to citizenship in the Choctaw Nation was perfected.

T. A. Bounds, under contracts of employment with a considerable number of Mississippi Choctaws, assisted them in perfecting their rights to citizenship and expended large sums of money and much labor in their behalf. His efforts were successful and resulted in securing for his clients very large financial benefits. He has not been paid for his services and expenses, and Congress has directed the Court of Claims to determine the amount to which he is equitably and justly entitled, and to enter up judgment in his favor therefor. This the Court of Claims refused to do solely upon the ground that the Act of Reference did not permit the entry of judgment for services rendered an individual Mississippi Choctaw.

We submit that the Court of Claims was in error in this, and in further support of this contention ask the Court to consider pages 24 to 35 and page 50 of the Appellants' brief filed in support of their motion to remand the case to the Court of Claims, where the question is considered at length.

No. 125.

CLAIM OF JOHN LONDON.

The petition in this case will be found on pages 83 to 87 of the Record.

The material allegations of the petition, all of which were supported by testimony, are as follows:

That in conjunction with Walter S. Field and M. M. Lindly he was an associate of Chester Howe in the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation. That he secured from certain bands of Mississippi Choctaws a contract of employment in the name of M. M. Lindly authorizing the said Lindly, his associates and assigns, to prosecute the said claim of the Mississippi Choctaws, and also secured from a large number of heads of families individual contracts and powers of attorney authorizing the said Lindly to prosecute their claims, the total number of said contracts supplemental to said band contracts being more than six hundred. That in accordance with his agreement with Lindly, Field and Howe, he appeared from time to time before the Dawes Commission, urging the claim of the Mississippi Choctaws, and later furnished 900 heads of families and adults with applications for identification, upon which applications they were subsequently identified. That the form of this application was furnished him by the said Lindly and Field. That where the Commission refused enrollment, he provided for an appeal to the Commissioner of Indian Affairs, which appeal was forwarded through the said Lindly. That the form for said petitions on appeal was furnished him by the said Lindly and Field. That a large sum of money was expended by him in securing the attendance of the Mississippi Choctaws before the Dawes Commission, and that the amount thus expended by him in excess of receipts was over $5,000. That he, in connection with his associates, Field, Lindly and Howe, represented the entire body of the Mississippi Choctaws.

This claim is so closely identified with that of Lindly and Field that it may be better considered in connection with that claim. The Court of Claims in Finding XLII, R., p. 128, which we maintain is entirely inadequate, considers these claims together. (See below.)

No. 126.

CLAIM OF WALTER S. FIELD AND MADISON M. LINDLY.

The petition of Walter S. Field will be found on pages 76 to 82 of the Record; the original petition of Lindly appears on pages 67 and 68 of the Record, and his second petition on pages 68 to 75.

Before taking up a statement of the allegations of the petition of Field and the second petition of Lindly, which are very similar, we wish to call particular attention to a most serious error in Court of Claims' Finding XLII (Record, p. 128) in respect to the original petition filed by Lindly. In speaking of this petition the Court says:

"3. M. M. Lindly filed his first petition May 7, 1909, *claiming then* in his own right *the sum of* $200 *for services rendered and expenses incurred* in behalf of the Mississippi Choctaws and gave his testimony in support of the same."

This is an entirely erroneous statement of his claim, and it is difficult to explain how such an error could have been made. The petition expressly states (Record, p. 68):

"3. That your petitioner was employed in the prosecution of said claims as an associate of Chester Howe, and in the course of such employment *he rendered certain legal services* and spent the sum of $200.

"Wherefore, petitioner prays that he may become a party plaintiff in said suit by intervention, and that after due proof has been filed, he may have judgment against said defendants for the amounts so advanced as expenses, *and for the reasonable value of the services rendered by him*, as provided in said Acts of Congress."

The finding of the Court that Lindly at first claimed that he was only entitled to $200 *for services* and expenses both,

is therefore clearly erroneous, and there is nothing inconsistent between the first and second petitions filed by Lindly, the second petition being only an amplification of the first.

Briefly stated, the petitions of Field and Lindly allege that Lindly secured from the three bands of Mississippi Choctaws a contract and power of attorney authorizing him to represent them in the prosecution of their claim to citizenship in the Choctaw Nation, and that subsequently (after "the Department of the Interior held that it had no authority to approve any contracts made with them," Finding VI, Record, p. 99), Lindly secured a large number of contracts from Individual Mississippi Choctaws to the same effect. That Field became associated with Lindly and co-operated with him, and that later they entered into a written agreement with Chester Howe by which they became associates of Howe's in the prosecution of the claim. That in the prosecution of said claim they prepared petitions and briefs and presented the same before the Dawes Commission, and made arguments before the said Commission. That they then instituted appeals in a number of cases from the decision of the Commission to the United States District Court, which appeals were made test cases, and they participated in the argument of said cases, and in one instance secured a decision favorable to the Indians. That thereafter they, in connection with their associate Howe, presented the claims of the Mississippi Choctaws to the Department of the Interior, the Committees of the Senate and House of Representatives, to the Commissioner of Indian Affairs and to individual Senators and Representatives, and that through their efforts they finally secured favorable legislation by Congress by means of which the Mississippi Choctaws were finally enrolled as citizens of the Choctaw Nation, and thereby secured very valuable allotments and property rights as members of said Nation. That in the prosecution of this work the said Field and Howe had expended a large sum of money, and that they

had not been reimbursed for the money expended and had not been compensated for services rendered. That in addition to the services rendered on behalf of all the Mississippi Choctaws as a class, they also rendered services to a large number of individual Indians in procuring their identification and final allotment.

The Court of Claims has found as to Lindly that, "In his second deposition he supports the allegations of his second petition" (Finding XLII, sec. 3, Record, p. 128), and that, "On February 19, 1912, John London filed his intervening petition herein and shortly thereafter gave his deposition in support thereof" (Finding XLII, sec. 5, Record, p. 128), and it also appears that Field testified in the case.

Notwithstanding this testimony and much other disinterested testimony in support of these petitions, the Court of Claims in its Findings announced May 17, 1915 (Record, p. 94 and p. 179), failed to make Findings of Fact covering the claims of these Appellants (Record, p. 179).

To this action of the Court the Appellants Field, Lindly and London duly excepted (Record, p. 94), and presented bills of exception for the Court to sign (Record, pp. 94 and 95).

These Appellants filed no motion for a new trial upon the Findings of Fact and conclusions of law, but rested their cases upon the exceptions filed. No argument was made on behalf of either Field or Lindly on February 1, 1916, to secure a new trial for them (see Record of Proceedings, Record, p. 95), nor was any brief filed at that time; yet the Court of its own motion, and although the membership of the Court had changed since the arguments on behalf of Lindly and Field had been made, saw fit to treat their application for the settlement of a bill of exceptions, as a motion for a new trial, and made what it is pleased to call Findings of Fact in regard to certain features of the claims of Field

and Lindly (Record, pp. 128-130, Finding XLII; Opinion, Record, p. 179).

These facts were called to the attention of this Court in a motion for a writ of *certiorari*, presented to the Court on April 9, 1917. We again ask the attention of the Court to this motion for a *certiorari*, and the brief filed in support of the same, as throwing light upon the case as now presented.

The Findings of Fact XLII, as thus ultimately handed down by the Court of Claims (Record, pp. 128-30), were, these Appellants think, entirely inadequate to present the issues of law really arising in the case, and for that reason they have filed and, on December 16, 1918, presented to this Court a motion to remand the case to the Court of Claims for additional Findings of Fact. In support of this motion a brief was filed fully discussing the law of the case as applicable to the claims of these Appellants, and pointing out in detail what these Appellants believe to be errors of law committed by the Court of Claims in respect to their claims. We respectfully call attention to pages 14 to 61 of that brief, and ask that the same be considered as a part of this brief upon the hearing on the merits.

The appellees contend that the band contracts upon which, in part only, the claims of Field, Lindly, Howe and London are based, could not have been operative and binding on the Mississippi Choctaws as a class for the reason, among others, that the Mississippi Choctaws were citizens of the State of Mississippi.

This raises the question, were the Mississippi Choctaws *Indians* under the power and control of the United States and subject to laws applicable to Indians, or were they full-fledged citizens of the United States, having the same status as white residents of Mississippi?

We submit that they were Indians in the fullest sense, and that when Congress recognized them as such by the progressive steps of legislation in the acts of February 11,

1897 (Finding XV, R., p. 102); June 7, 1897 (Finding XVI, R., p. 103); June 28, 1898 (Finding XVIII, R., p. 104); May 31, 1900 (Finding XXIII), R., p. 109), and July 1, 1902 (Finding XXIX, R., p. 112), the courts are absolutely bound by this legislative assertion of their status:

> "When and for how long an Indian community shall be recognized and dealt with as a dependent tribe are questions to be determined by Congress and not by the courts."
>
> U. S. vs. Sandoval, 231 U. S. 28.

Congress can determine when this guardianship shall cease, and State laws have no force or effect.

> U. S. vs. Rickert, 188 U. S. 432;
> Tiger vs. Investment Co., 221 U. S. 280;
> The Kansas Indians, 5 Wall. 737.

> "In determining what is essential to the protection of the Indians, Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts."
>
> Perrin vs. U. S., 232 U. S. 478-488;
> Johnson vs. Gearlds, 234 U. S. 422;
> Hickman vs. U. S., 224 U. S. 445.

It is immaterial whether the Department of the Interior, after the treaty of 1830, ceased to exercise jurisdiction over them, the neglect of the department could not change their status. Their status was with Congress.

The treaty of 1830 did not in itself pretend to make any individual Choctaw a citizen. It at most only opened a way by which they might become citizens. There is no finding in this case that any of the defendant Mississippi Choctaws or their ancestors ever took the steps necessary to make them citizens, and the action of Congress, above referred to, has estopped this Court from assuming that they ceased to be Indians.

Moreover, it is historically true, as fully established by the facts set forth in the case of the Choctaw Nation vs. United States, 119 U. S. 1, that the United States dealt with the Choctaw Nation as including the Choctaw Indians residing in Mississippi. Many of the questions involved in that litigation directly related to these Mississippi Indians.

The decisions of the Supreme Court, above cited, make it certain that the acts of the State of Mississippi could not change or in any way affect the status of the Indians within the State.

The various acts of the Legislature of Mississippi and the provisions of the State Constitution, as set forth in Finding V, R., p. 98, are, therefore, entirely irrelevant and immaterial. They are not even historically important. They were absolute nullities.

We also respectfully submit that these Indians did not become citizens of the United States under Section 6 of the act of February 8, 1887 (24 Stat. 390), or by the act of March 3, 1901 (31 Stat. 1447), as set forth in said Finding V.

The act of February 8, 1887, was not intended to affect *bodies* of Indians. It distinctly treats of individual Indians, who by some independent act of their own, have *left* their Indian tribe and associations, and have gone out among the whites and taken up their ways and customs with the intention of becoming citizens of the States. Its purpose was to give vent to the individual aspiration to break away from barbarism and become civilized.

No such conditions existed among the Mississippi Choctaws. To begin with, there were some three to five thousand of them. They did not take up civilized life separate and apart from their tribe, for they continued to live just where they had been living, and just as the other members of the nation had been living. They remained behind in Mississippi for this expressed purpose. The only possible difference

was that they, perhaps, did not maintain a separate formal tribal organization, such as was maintained by the nation proper. But this, instead of being an evidence of civilization, is rather the reverse. That they did not openly maintain the old tribal organization, may be easily accounted for by the hostile legislation of the State, and the failure of the United States to afford the proper protection.

No. 127.

CLAIM OF J. J. BECKHAM.

The petition in this case will be found on pages 62 to 67 of the Record.

The allegations of the petition are as follows:

That he was an associate of J. S. Bounds and William N. Vernon, and that under contracts of employment he removed a considerable number of Mississippi Choctaws to the Indian Territory; secured locations for them; assisted them in their identification before the Dawes Commission, and afforded them material assistance while perfecting their claim to citizenship in the Choctaw Nation, without which assistance their claims would have failed. He further states that he expended $6,000 in their behalf and names the individuals he assisted.

Most of the essential allegations are sustained by the Court of Claims in general terms in its Finding XL (Record, pp. 126 and 127), but said Finding does not show whether or not Beckham was an associate of J. S. Bounds and William N. Vernon.

The Court of Claims held, as in the similar case of J. S. Bounds, No. 124 above, that no judgment could be entered

for services of this character rendered individual Indians, nor for expenses incurred on behaf of Individual Indians.

For reasons more particularly set forth above in connection with the claim of J. S. Bounds we submit that this was error.

No. 128.

CLAIM OF WILLIAM N. VERNON.

The petition in this case will be found on pages 31 to 39 of the Record.

The allegations of the petition are sustained by the Court of Claims in general terms in its Finding XXXVII (Record, pages 122 and 127), and are substantially as follows:

That under contracts of employment he removed some 60 Mississippi Choctaws from Mississippi to Indian Territory; that he paid all of the expenses incident to their removal, including the cost of their subsistence; upon their arrival in Indian Territory, provided them with shelter and other necessities, and placed them in possession of lands, and further assisted them until their allotments were obtained. The names of the Indians thus assisted are not found by the Court, and the Findings are in other respects incomplete.

The Court of Claims held, as in the similar case of J. S. Bounds, No. 124 above, that no judgment could be entered for services of this character rendered under contracts of employment by individual Indians, nor for expenses incurred on behalf of individual Indians.

For reasons more particularly set forth above in connection with the claim of J. S. Bounds we submit that this was error.

No. 129.

CLAIM OF KATIE A. HOWE, EXECUTRIX OF CHESTER HOWE.

The petition of Mrs. Howe will be found on pages 42 to 50 of the Record. Later she filed an amended petition, a part of which was printed in the Record on pages 50 and 51. Through some error the whole of this petition was not printed in the Record, but the full petition has been printed as an "Appendix A" to the motion of this appellant and others, to remand the case to the Court of Claims for additional findings of fact, which motion was presented to this Court on December 16, 1918. We ask the attention of the Court to this petition as there set forth in full.

The allegations of these several petitions are substantially as follows:

That Howe had been employed on behalf of the several Bands of Mississippi Choctaws under the band contract entered into with said bands through M. M. Lindly as set forth in the testimony of Walter S. Field, as well as through a large number of individual contracts including all the contracts taken in the names of J. E. Arnold, L. P. Hudson, and the firm of Hudson and Arnold, an interest in which last mentioned contracts had been assigned to him. The number of these contracts does not specifically appear but the Court has found (Finding XXXV, Sec. 9, Record, p. 120) that Arnold alone secured contracts with approximately 668 Mississippi Choctaw applicants, and it appears that contracts were also obtained in the name of Hudson, and of the firm of Hudson and Arnold.

The petitions further allege that Howe rendered legal service to the Mississippi Choctaws before the Dawes Commission, the Courts of Indian Territory, before the Interior Department and before Congress, and that he assisted in the identification, location, removal and subsistence of individual Mississippi Choctaws.

The allegations of these petitions were supported by testimony, and the Court of Claims in Finding XXXIII (Record, p. 116), has found that Howe was actively engaged in pressing the claims of Mississippi Choctaws upon individual Representatives and Senators, before the Sub-committee on Indian Affairs of the House, the officials of the Indian Office and the Secretary of the Interior, but the Finding is entirely incomplete and unsatisfactory as to the full nature and extent of the services rendered by him, though in the opinion, on page 178 of the Record, the Courts says that he advocated the cause of the Mississippi Choctaws *"with great faithfulness and signal ability."*

This statement by the Court makes it perfectly obvious that the Finding does not fully set forth the services actually rendered by Howe. Evidently the Court was of the opinion that in view of their interpretation of the Acts of reference it was not incumbent upon them to make full and complete findings of fact.

The arguments set forth above in connection with the cases of J. S. Bounds, No. 124, and Walter S. Field and Madison M. Lindly, No. 126, are largely applicable to this case, and we ask the Court to consider these cases together.

CONCLUSION.

In the opinion of the Court of Claims (Record, p. 167) it is suggested as mitigating against the rights of the claimants that they sought the Indians rather than that the Indians sought them. We submit this awakening of these poor, ignorant Indians to a knowledge of their rights should be the basis for an additional allowance, rather than for criticism. But for some reason the Court of Claims has apparently viewed with suspicion and distrust every act of the claimants, however innocent, and however beneficial it may

have been to the Indians. We do not believe the facts as found by the Court, incomplete and insufficient as they are, justify this attitude.

The Court further suggests that it is impossible to segregate the services of these claimants and show to what extent they did in fact influence Congress to pass this legislation. This does not preclude a recovery. It is of course impossible to say what particular thing influenced Congress to enact this legislation. In the very nature of things this cannot be done. But Congress knew that, yet it referred this case to the Court to decide, just as a Court or jury has to pass upon the value of the services of an attorney in arguing and conducting a case before a Court. In such case the Court and jury do not inquire as to the exact psychological effect of the lawyer's argument on the minds of the Court and jury. They know that is impossible of exact ascertainment, but they do consider the labor involved and the ultimate results of the litigation. That is all Congress expected and all we are asking in this case.

The law does not require the impossible. The Court is required to accept things as they are, and to use its knowledge of the affairs of men, conducted according to the natural order of things, and apply their wisdom to working out a judgment that will be fair and just as between man and man, and which will carry into effect the plainly expressed intention of Congress that Howe, Winton and their associates should be paid a reasonable compensation for their years of toil. It cannot be a case of exact computation. It should be a case of liberal estimation.

In this connection we would also call attention to the contention of the appellees that the beneficial results obtained were produced by the efforts of Representative (now Senator) Williams. If it is true that the attorneys cannot show that their efforts secured the legislation it must be equally impossible to show that the efforts of Senator Williams accomplished that result. Mr. Williams was but one of the

numerous members of the House of Representatives, and to permit him to say, or to have others say for him, that he *alone* secured this legislation, would be as absurd as to permit a single juror to say that he alone was responsible for a given verdict; that he made up his mind without regard to the argument of the attorneys, and that he, and not the attorneys, convinced the other eleven members of the jury that the plaintiff was entitled to a verdict.

When it is further considered that the action of the Senate had also to be secured, it is still more apparent how baseless is this argument of the defense. Certainly, Congress, when it enacted these acts of reference, was unconscious of the fact that its former action had been controlled by Mr. Williams.

There was no person in such a favorable position to form an accurate judgment as to whose efforts were the effective force in securing this legislation as Commissioner of Indian Affairs, W. A. Jones. During all this agitation he was Commissioner, and had this matter directly under his charge and observation. He had wide experience in these matters and knew, probably better than any other man, whose efforts were most potent in securing this legislation. His testimony was taken and yet the Findings of the Court do not reveal in any way his views of the case.

The Court of Claims has been zealous and technical in upholding the contentions of the appellees. We do not believe Congress intended the Acts of reference to be construed with severe technicality, for these Acts in terms direct the Court to render judgment, *on the principle of quantum meruit*, for such sum *"as may appear equitably or justly due."*

Yet the Court in its opinion of January 29, 1917, on page 213 of the Record, says:

> "The Court *in finding the facts and in reaching its conclusions of law* upon the issues involved in the case *has adhered with inflexible rigidity* to the principles laid down in Trist vs. Child."

We respectfully submit that the Court of Claims in other respects has adhered with equally inflexible rigidity to technicalities, not contemplated by the Acts of reference, and thereby has done a great injustice to these appellants. For no matter what technical objections may be raised against their claims, no one can seriously contend that the efforts of these appellants were not of vital and material benefit to the Mississippi Choctaws, or that they are not equitably and justly entitled to compensation for the services they in fact rendered. We again assert our conviction that it was not the intention of Congress that this should be done.

GUION MILLER,
Attorney for Appellants.